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BILL 1

Government  
Publications

2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

86

An Act to amend The Evidence Act

MR. WISHART





#### EXPLANATORY NOTE

The subsection is brought into accord with the *National Transportation Act* (Statutes of Canada 1966-67, chapter 69) which established the Canadian Transport Commission as the successor to the Board of Transport Commissioners of Canada.



BILL 1

1968-69

## An Act to amend The Evidence Act

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** Subsection 2 of section 36 of *The Evidence Act* is amended <sup>R.S.O. 1960, c. 125, s. 36, subs. 2, amended</sup> by striking out "Board of Transport Commissioners of Canada" in the first and second lines and inserting in lieu thereof "Canadian Transport Commission".

**2.** This Act may be cited as *The Evidence Amendment Act*, <sup>Short title</sup> 1968-69.

An Act to amend The Evidence Act

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*1st Reading*

November 19th, 1968

*2nd Reading*

*3rd Reading*

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MR. WISHART

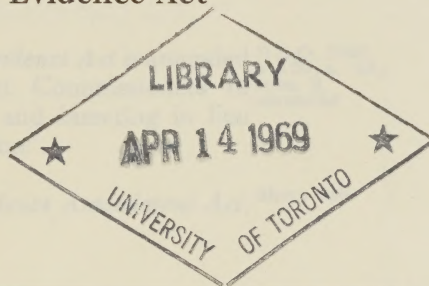
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## BILL 1

2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

An Act to amend The Evidence Act



Mr. WISHART



BILL 1

1968-69

## An Act to amend The Evidence Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** Subsection 2 of section 36 of *The Evidence Act* is amended <sup>R.S.O. 1960, c. 125, s. 36, subs. 2, amended</sup> by striking out "Board of Transport Commissioners of Canada" in the first and second lines and inserting in lieu thereof "Canadian Transport Commission".

**2.** This Act may be cited as *The Evidence Amendment Act*, <sup>Short title</sup> 1968-69.



An Act to amend The Evidence Act

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*1st Reading*

November 19th, 1968

*2nd Reading*

February 19th, 1969

*3rd Reading*

March 25th, 1969

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MR. WISHART

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A20N  
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356

Government  
Publications

## BILL 2

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

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### An Act to amend The Municipal Act

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MR. McKEOUGH

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#### EXPLANATORY NOTES

SECTION 1. The amendment deletes a reference to the oath of allegiance in the Declaration of Qualification. The oath is now required to be taken before assuming office.

SECTION 2. Self-explanatory.



## BILL 2

1968-69

## An Act to amend The Municipal Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts<sup>a</sup> as follows:

1. Form 1 of *The Municipal Act*, as amended by section 21 of *The Municipal Amendment Act, 1962-63*, is further amended <sup>R.S.O. 1960, c. 249, Form 1, amended</sup> by striking out item 6.

2. Notwithstanding the provisions of any general or special Act or any by-law, where in the year 1968 the day for polling for the election of members of council and for members of a divisional board of education in any municipality is the same, the polls in such municipality shall remain open from 10 o'clock in the forenoon to 8 o'clock in the afternoon, provided that the council of the municipality may by by-law passed at any time after the coming into force of this section change the time for opening and closing the polls so that they will remain open for not less than eight consecutive hours between 8 o'clock in the forenoon and 9 o'clock in the afternoon. <sup>Hours of polling where council and divisional board members elected on same day</sup>

3. This Act comes into force on the day it receives Royal Assent. <sup>Commencement</sup>

4. This Act may be cited as *The Municipal Amendment Act, 1968-69*. <sup>Short title</sup>

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An Act to amend The Municipal Act

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*1st Reading*

November 21st, 1968

*2nd Reading*

*3rd Reading*

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MR. McKEOUGH

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**BILL 2**

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

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**An Act to amend The Municipal Act**

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MR. McKEOUGH

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## BILL 2

1968-69

## An Act to amend The Municipal Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Form 1 of *The Municipal Act*, as amended by section 21 of *The Municipal Amendment Act, 1962-63*, is further amended by striking out item 6. R.S.O. 1960, c. 249, Form 1, amended

2. Notwithstanding the provisions of any general or special Act or any by-law, where in the year 1968 the day for polling for the election of members of council and for members of a divisional board of education in any municipality is the same, the polls in such municipality shall remain open from 10 o'clock in the forenoon to 8 o'clock in the afternoon, provided that the council of the municipality may by by-law passed at any time after the coming into force of this section change the time for opening and closing the polls so that they will remain open for not less than eight consecutive hours between 8 o'clock in the forenoon and 9 o'clock in the afternoon. Hours of polling where council and divisional board members elected on same day

3. This Act comes into force on the day it receives Royal Assent. Commencement

4. This Act may be cited as *The Municipal Amendment Act, 1968-69*. Short title

An Act to amend The Municipal Act

*1st Reading*

November 21st, 1968

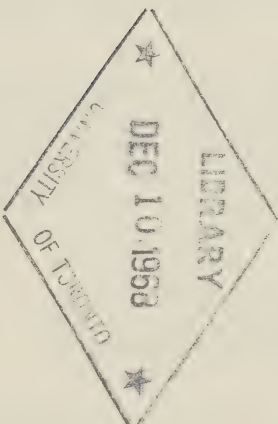
*2nd Reading*

November 26th, 1968

*3rd Reading*

November 26th, 1968

MR. McKEOUGH



BILL 3

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

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**An Act to relieve Medical Practitioners from Liability  
in respect of Voluntary Emergency Medical Services**

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MR. SARGENT

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#### EXPLANATORY NOTE

The purpose of the Bill is to relieve medical practitioners from liability in respect of voluntary medical services rendered at the scene of an accident or other emergency.

BILL 3

1968-69

**An Act to relieve Medical Practitioners  
from Liability in respect of Voluntary  
Emergency Medical Services**

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** In this Act, "medical practitioner" means a person registered as a medical practitioner under *The Medical Act*. Interpre-  
tation  
R.S.O. 1960,  
c. 234

**2.** Where a medical practitioner voluntarily and without expectation of compensation or reward renders medical services at the scene of an accident or other emergency to a person who is ill, injured or unconscious and the services are not rendered, Relief from  
liability for  
damages

(a) in a hospital;

(b) in his office or the office of another medical practitioner; or

(c) in any other place having adequate medical equipment,

he shall not be liable for damages for injuries to or the death of such person alleged to have been caused by an act or omission on his part in rendering the medical services, unless it is established that the injuries or death were caused by gross negligence on his part.

**3.** Nothing in section 2 shall be deemed to relieve a medical practitioner from liability for damages for injuries to or the death of any person caused by an act or omission on the part of the medical practitioner in respect of medical services rendered by him in the normal and ordinary course of his practice and not under the circumstances set forth in section 2. Act does  
not apply  
to normal  
medical  
services

Commence-  
ment

4. This Act comes into force on the day it receives Royal Assent.

Short title

5. This Act may be cited as *The Voluntary Emergency Medical Services Act, 1968-69*.









An Act to relieve Medical Practitioners  
from Liability in respect of Voluntary  
Emergency Medical Services

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*1st Reading*

November 22nd, 1968

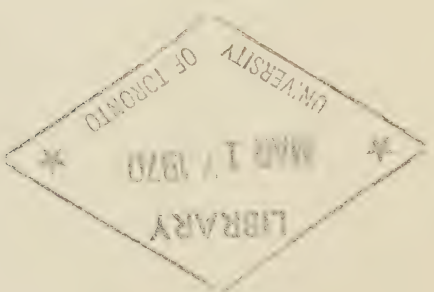
*2nd Reading*

*3rd Reading*

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MR. SARGENT

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BILL 4

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

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**An Act respecting Ethics of Elected Representatives**

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MR. SHULMAN

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#### EXPLANATORY NOTE

The Bill provides a code of ethics covering the use of influence and performance of services for gain and applies to members of the Legislative Assembly and members of municipal councils and school boards.



BILL 4

1968-69

## An Act respecting Ethics of Elected Representatives

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** In this Act “elected representative” means a member of <sup>Interpre-</sup> the Legislative Assembly, a member of a municipal council or tation a member of a school board.

**2.** No elected representative shall, Ethics

- (a) ask, receive or agree to receive any form of compensation, from a source other than public funds, for performing his duties as a public official or for services in connection with any judicial or administrative proceeding or activity wherein his official position might reasonably be expected to give him unusual influence;
- (b) ask, receive or agree to receive anything of value upon any understanding that his vote, opinion, judgment or action will be influenced thereby;
- (c) receive any gift having a value of \$25 or more under circumstances in which it could reasonably be inferred that the gift was made to influence him in the performance of his official duties; or
- (d) use his official position to secure privileges or exemptions for himself or others, or have any interest, financial or otherwise, direct or indirect, or engage in any business transaction or professional activity or incur any obligation of any nature that is in substantial conflict with the proper discharge of his duties in the public interest.

**3.** Each elected representative shall, on or before the 31st <sup>Report of</sup> day of January in each year, file with, <sup>financial</sup> <sup>interest in</sup> <sup>regulated</sup> <sup>activities</sup>

- (a) in the case of a member of the Legislative Assembly, the Clerk of the Assembly;
- (b) in the case of a member of a municipal council, the clerk of the municipality; or
- (c) in the case of a member of a school board, the secretary of the board,

a written report in respect of the preceding calendar year, or part thereof in which he was an elected representative, of each financial interest, direct or indirect, of a value in excess of \$500 of himself, his spouse and his dependants in any activity that is regulated under the jurisdiction of the body on which he serves as an elected representative or any agency thereof.

Commence-  
ment

**4.** This Act comes into force on the day it receives Royal Assent.

Short title

**5.** This Act may be cited as *The Elected Representatives' Ethics Act, 1968-69*.









An Act respecting  
Ethics of Elected Representatives

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*1st Reading*

November 22nd, 1968

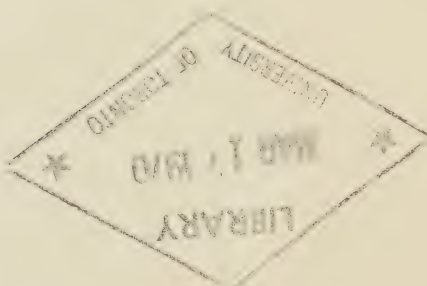
*2nd Reading*

*3rd Reading*

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MR. SHULMAN

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

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**The Expropriations Act, 1968-69**

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MR. WISHART

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#### EXPLANATORY NOTE

The Bill revises *The Expropriation Procedures Act, 1962-63* and incorporates the principal recommendations of the Law Reform Commission in its report on the Basis for Compensation on Expropriation and of the Royal Commission Inquiry into Civil Rights in section 1 of Part III of its first report.

The principal changes include:

1. Provision for approval by a politically responsible authority before an expropriation may proceed and an inquiry to determine the necessity, fairness and soundness of any particular expropriation.
2. The time limits are amended to reduce the time available for delays to an expropriating authority and to increase the time available to the owner before giving possession.
3. The Land Compensation Board is established to replace all tribunals determining compensation.
4. More particular provisions for procedures on arbitrations, including provisions for appeals, stated cases and quashing.
5. Provision for expropriated land intended to be abandoned to revert in the owner or to be taken and compensated for, at the option of the owner.
6. The owner to have an opportunity to repurchase his expropriated land if the expropriating authority disposes of it.
7. More detailed codification of the rules governing compensation.
8. Provision for compensation for market value plus expanded compensation for disturbance costs and damages for injurious affection.
9. Provision for awarding additional amounts sufficient to provide other accommodation at least equivalent.

BILL 5

1968-69

## The Expropriations Act, 1968-69

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Interpre-  
tation

(a) “approving authority” means the approving authority as determined under section 5;

(b) “Board” means the Land Compensation Board established under section 28;

(c) “expropriate” means the taking of land without the consent of the owner by an expropriating authority in the exercise of its statutory powers, but does not include the taking of land for the widening of a highway where entry is deferred under section 338 of *The Municipal Act*;

R.S.O. 1960,  
c. 249

(d) “expropriating authority” means the Crown or any person empowered by statute to expropriate land;

(e) “injurious affection” means,

(i) where a statutory authority acquires part of the land of an owner,

a. the reduction in market value thereby caused to the remaining land of the owner by the acquisition or by the construction or use, or both, of the works thereon, and

b. such personal and business damages, resulting from the construction or use, or both, of the works as the statutory authority would be liable for if the construction or use were not under the authority of a statute,

(ii) where the statutory authority does not acquire part of the land of an owner,

a. such reduction in the market value of the land of the owner, and

b. such personal and business damages,

resulting from the construction and not the use of the works by the statutory authority, as the statutory authority would be liable for if the construction were not under the authority of a statute,

and for the purposes of this clause, part of the lands of an owner shall be deemed to have been acquired where the owner from whom lands are acquired retains lands contiguous to those acquired or retains lands of which the use is enhanced by unified ownership with those acquired;

(f) “judge”, except where otherwise described, means a judge of the county or district court of the county or district in which the land or the greater part of it is situate;

(g) “land” includes any estate, term, easement, right or interest in, to, over or affecting land;

(h) “owner” includes a mortgagee, lessee, tenant, occupant, execution creditor, a person entitled to a limited estate or interest in land, a committee of the estate of a mentally incompetent person or of a person incapable of managing his affairs, and a guardian, executor, administrator or trustee in whom land is vested;

(i) “prescribed” means prescribed by the regulations made under this Act;

(j) “purchase-money mortgage” means a mortgage given by a purchaser of land to the vendor of the land or his nominee as security for the payment of all or part of the consideration for the sale;

(k) “registered owner” means an owner of land whose interest in the land is defined and whose name is specified in an instrument in the proper registry, land titles or sheriff’s office, and includes a person shown as a tenant of land on the last revised assessment roll;

(l) "security holder" means a person who has an interest in land as security for the payment of money;

(m) "statutory authority" means the Crown or any person empowered by statute to expropriate land or cause injurious affection. 1962-63, c. 43, s. 1, *amended*.

(2) Any document required by this Act to be served may be <sup>Service</sup> served personally or by registered mail addressed to the person to be served at his last-known address, or if that person or his address is unknown, by publication once a week for three weeks in a newspaper having general circulation in the locality in which the land concerned is situate and service shall be deemed to be made,

(a) in the case of service by registered mail, on the second day after the day of mailing; and

(b) in the case of service by publication, on the date of the third publication. *New*.

**2**—(1) Notwithstanding any general or special Act, where <sup>Application of Act</sup> land is expropriated or injurious affection is caused by a statutory authority, this Act applies. 1962-63, c. 43, s. 2 (1), *amended*.

(2) The provisions of any general or special Act providing <sup>References in other Acts to R.S.O. 1960, cc. 249, 338, deemed references to this Act</sup> procedures with respect to the expropriation of land or the compensation payable for land expropriated or for injurious affection that refer to *The Municipal Act*, *The Public Works Act* or any other Act shall be deemed to refer to this Act and not to *The Municipal Act*, *The Public Works Act* or other Act, as the case may be. 1962-63, c. 43, s. 2 (5).

(3) This Act does not apply to the use of or injury to land <sup>Application to 1962-63, c. 39</sup> authorized under *The Drainage Act*, 1962-63 for the purposes of a drainage works constructed under that Act or to any proceedings in connection therewith. 1965, c. 38, s. 1.

(4) Where there is conflict between a provision of this Act <sup>Conflict</sup> and a provision of any other general or special Act, the provision of this Act prevails. 1962-63, c. 43, s. 2 (4).

**3.** This Act binds the Crown. 1962-63, c. 43, s. 3. <sup>Crown bound by Act</sup>

**4.**—(1) An expropriating authority shall not expropriate <sup>Approval of intention to expropriate</sup> land without the approval of the approving authority as determined under section 5.



Gas storage  
areas  
excepted  
1964, c. 74

(2) Subsection 1 does not apply to an authorization of the Ontario Energy Board under *The Ontario Energy Board Act, 1964* in respect of storage of gas in a gas storage area or to an expropriation authorized under section 40 of that Act. *New.*

Approving  
authority

5.—(1) Subject to subsections 3, 4 and 5, the approving authority in respect of an expropriation shall be the Minister responsible for the administration of the Act in which the power to expropriate is granted, except that,

- (a) where a municipality or a local board thereof, other than an elected school board, expropriates lands for municipal purposes, the approving authority shall be the council of the municipality; and
- (b) where an elected school board expropriates lands, the approving authority shall be the school board.

Idem,  
private  
Acts

(2) Where the power to expropriate is granted in a private Act, the approving authority shall be,

- (a) in the case of universities or other educational institutions, the Minister of University Affairs;
- (b) in the case of hospitals or other medical or health institutions, the Minister of Health; and
- (c) in the case of all other corporations, the Provincial Secretary and Minister of Citizenship.

Idem,  
public  
works  
R.S.O. 1960,  
c. 338

(3) Where an expropriation is made under *The Public Works Act* for the benefit of a department or agency of the Ontario Government, the approving authority shall be the Minister for the department or responsible for the agency for the benefit of which the land is expropriated.

Idem,  
Power  
Commission  
R.S.O. 1960,  
c. 300

(4) Where an expropriation is made under *The Power Commission Act*, the approving authority shall be the Minister of Energy and Resources Management.

Idem,  
other cases

(5) The approving authority in any case not provided for in this section shall be the Minister of Justice and Attorney General. *New.*

Notice of  
intention  
to expro-  
pate

6.—(1) Upon applying for an approval under section 4, an expropriating authority shall serve a notice of its application for approval to expropriate upon each registered owner of the lands to be expropriated and shall publish the notice once a week for three consecutive weeks in a newspaper having general circulation in the locality in which the lands are situate.

(2) Any owner of lands in respect of which notice is given <sup>Notification for hearing</sup> under subsection 1 who desires a hearing, shall so notify the approving authority in writing,

- (a) in the case of a registered owner, served personally or by registered mail within thirty days after he is served with the notice, or, when he is served by publication, within thirty days after the first publication of the notice;
- (b) in the case of an owner who is not a registered owner, within thirty days after the first publication of the notice.

(3) The Lieutenant Governor in Council may, in special <sup>Order dispensing with inquiry</sup> circumstances where he deems it necessary or expedient in the public interest to do so, direct that an intended expropriation shall proceed without the inquiry procedure and thereupon subsections 1 and 2 of this section, section 7 and subsections 1 and 2 of section 8 do not apply thereto.

(4) Where an order is made under subsection 3, the expropriating authority shall forthwith serve a copy of the order on each registered owner affected by the intended expropriation. <sup>Service of order</sup>  
*New.*

**7.**—(1) The Minister of Justice and Attorney General <sup>Appointment of inquiry officers</sup> shall appoint a chief inquiry officer and such inquiry officers as he considers necessary.

(2) The chief inquiry officer shall have general supervision <sup>Duties of chief inquiry officer</sup> and direction over inquiry officers and the assignment of their duties.

(3) Where a notification is made under subsection 2 of <sup>Hearing</sup> section 6, the approving authority shall refer the matter to the chief inquiry officer who shall forthwith assign an inquiry officer who shall fix a time and place for a hearing and who shall cause notice of the hearing to be served on each party to the inquiry.

(4) At least five days before the date fixed for the hearing, <sup>Notice of grounds</sup> the expropriating authority shall serve upon each party to the inquiry a notice indicating the grounds upon which it intends to rely at the hearing and shall make available for inspection by the parties any documents, including maps and plans, that the expropriating authority intends to use at the hearing.

(5) The hearing shall be by means of an inquiry conducted <sup>Inquiry</sup> by the inquiry officer who shall inquire into whether the taking of the lands or any part of the lands of an owner or of

more than one owner of the same lands is fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority.

Report

(6) The inquiry officer shall report to the approving authority a summary of the evidence and arguments advanced by the parties, the inquiry officer's findings of fact, and his opinion on the merits of the application for approval with his reasons therefor.

Combined inquiries

(7) The inquiry officer may combine two or more related inquiries and conduct them in all respects and for all purposes as one inquiry.

Parties

(8) The expropriating authority, each owner who notifies the approving authority that he desires a hearing in respect of the lands intended to be expropriated and any owner added as a party by the inquiry officer are parties to the inquiry.

Powers and duties of inquiry officer

(9) The inquiry officer,

(a) may add any owner whose land would be affected by the expropriation of the lands concerned in the inquiry or any modification thereof as a party to the inquiry;

(b) shall give every party to the inquiry an opportunity to present evidence and argument and to examine and cross-examine witnesses, either personally or by his counsel or agent;

(c) is not bound by the technical or legal rules of evidence; and

(d) may inspect the lands concerned either alone or in the presence of the parties. *New.*

Powers and duties of approving authority

**8.—**(1) The approving authority shall consider the report of the inquiry officer and shall approve or not approve the proposed expropriation or approve the proposed expropriation with such modifications as the approving authority considers proper, but an approval with modifications shall not affect the lands of a registered owner who is not or has not been made a party to the hearing.

Reasons

(2) The approving authority shall give written reasons for its decision and shall cause its decision and the reasons therefor to be served upon all the parties.

(3) The approving authority shall certify its approval in <sup>Certificate</sup> the prescribed form. *New.*

9.—(1) Where a proposed expropriation has been approved <sup>Registration</sup> under this Act, the expropriating authority shall register, <sup>of plan</sup> within three months after the granting of the approval in the proper registry or land titles office a plan of the land signed by the expropriating authority and by an Ontario land surveyor, and thereupon, but not otherwise, the land vests in the expropriating authority.

(2) Where the land is required for a limited time only or <sup>Where land</sup> only a limited estate, right or interest therein is required, <sup>required</sup> the plan registered under this section shall indicate by appropriate words thereon that the land is taken for such limited <sup>tempor-</sup> time only or that only such limited estate, right or interest <sup>arily,</sup> therein is taken, and, by the registration in such case, the <sup>etc.</sup> land for such limited time or such limited estate, right or interest therein vests in the expropriating authority.

(3) In the case of an omission, misstatement or erroneous <sup>Correction</sup> description in a plan registered under this section, the ex- <sup>of errors</sup> propriating authority may register in the proper registry or land titles office a plan replacing or amending the original plan and signed by the expropriating authority and by an Ontario land surveyor, and a plan registered under this subsection shall be marked to show the nature of the replacement or amendment and is of the same force and effect as, and is in substitution for, the original plan to the extent that such plan is replaced or amended thereby.

(4) Where a plan purports to have been signed by an ex- <sup>Presump-</sup> propriating authority under this section, it shall be presumed <sup>tion as to</sup> to have been signed by the expropriating authority without <sup>signing</sup> proof of the signature or official character of the person appearing to have signed it, unless otherwise directed by a court or the Board.

(5) Where a limited estate, right or interest in land is <sup>Ontario</sup> being taken under *The Power Commission Act* for an electrical <sup>Hydro</sup> transmission or distribution line carried on single poles, <sup>R.S.O. 1960,</sup> The Hydro-Electric Power Commission of Ontario may, <sup>c. 300</sup> before registering a plan under subsection 1, register in the proper registry or land titles office a preliminary plan, to be known as and marked "Preliminary Plan" and being a plan with or without local description, signed by the secretary of the Commission and illustrating the location of the proposed line and indicating by appropriate words thereon the nature of the estate, right or interest being taken, and such preliminary plan when registered has the same force and effect as a



plan registered under subsection 1, but a plan in accordance with subsection 1 shall be registered within two years after the registration of the preliminary plan in substitution for the preliminary plan. 1962-63, c. 43, s. 4, *amended*.

Notice of  
expro-  
priation

**10.**—(1) Where a plan has been registered under section 9 and no agreement as to compensation has been made with the owner, the expropriating authority may serve the owner, and shall serve the registered owner, within thirty days after the date of registration of the plan, with a notice of expropriation of his land, in the prescribed form, but failure to serve the notice does not invalidate the expropriation.

Election of  
date for  
compen-  
sation

(2) Where a plan has been registered under section 9, the registered owner may elect, by notice in writing served upon the expropriating authority, within thirty days after the owner was served with the notice under subsection 1, to have the compensation to which he is entitled assessed,

- (a) where there has been an inquiry, as of the date the notice of hearing before the inquiry officer was served;
- (b) as of the date of the registration of the plan; or
- (c) as of the date on which he was served with the notice of expropriation. 1962-63, c. 43, s. 5, *amended*.

Reparation

**11.** Where land is expropriated or is injuriously affected by a statutory authority, the statutory authority may, before the compensation is agreed upon or determined, undertake to make alterations or additions or to construct additional work or to grant other lands, in which case the compensation shall be determined having regard to such undertaking, and, if the undertaking has not already been carried out, the Board may declare that, in addition to the compensation determined, if any, the owner is entitled to have such alteration or addition made or such additional work constructed or such grant made to him. 1962-63, c. 43, s. 6 (2), *amended*.

Gas storage  
areas  
1964, c. 74

**12.** Section 21 of *The Ontario Energy Board Act, 1964* applies in respect of the use of designated gas storage areas. 1965, c. 38, s. 2, *part, amended*.

Compen-  
sation

**13.**—(1) Where land is expropriated, the expropriating authority shall pay the owner such compensation as is determined in accordance with this Act. 1962-63, c. 43, s. 6 (1), *amended*.

Idem

(2) Where the land of an owner is expropriated, the compensation payable to the owner shall be based upon,

- (a) the market value of the land;

- (b) the damages attributable to disturbance;
- (c) damages for injurious affection; and
- (d) any special difficulties in relocation,

but, where the market value is based upon a use of the land other than the existing use, no compensation shall be paid under clause *b* for damages attributable to disturbance that would have been incurred by the owner in using the land for such other use. *New.*

**14.**—(1) The market value of land expropriated is the <sup>Market value</sup> amount that the land might be expected to realize if sold in the open market by a willing seller to a willing buyer.

(2) Where land is devoted to a purpose of such a nature <sup>Idem</sup> that there is no general demand or market for land for that purpose, and the owner intends in good faith to relocate in similar premises, the market value shall be deemed to be the reasonable cost of equivalent re-instatement.

(3) Where only part of the land of an owner is taken and <sup>Idem</sup> such part is of a size or shape for which there is no general demand or market, the market value and the injurious affection caused by the severance may be determined by determining the market value of the whole of the owner's land and deducting therefrom the market value of the owner's land after the severance is made.

(4) In determining the market value of land, no account <sup>Idem</sup> shall be taken of,

- (a) the special use to which the expropriating authority will put the land;
- (b) any increase or decrease in the value of the land resulting from the imminence of the development in respect of which the expropriation is made or from any imminent prospect of expropriation;
- (c) any increase in the value of the land resulting from the land being put to a use that could be restrained by any court or is contrary to law or is detrimental to the health of the occupants of the land or to the public health. *New.*

**15.** Upon application therefor, the Board shall, by order, <sup>Increase by Board</sup> after fixing the market value of lands used for residential purposes of the owner under subsection 1 of section 14,



award such additional amount of compensation as, in the opinion of the Board, is necessary to enable the owner to relocate his residence in accommodation that is at least equivalent to the accommodation expropriated. *New.*

Separate  
interests

**16.** Where there are more separate interests than one in land, other than the interest of a security holder or a vendor under an agreement for sale, the market value of each such separate interest shall be valued separately. *New.*

Security  
holders

**17.—(1)** Where land is subject to a security interest,

- (a) the value of the interest of the security holder shall be determined in accordance with this section and section 21 and not otherwise; and
- (b) the market value of the land shall be determined without regard to the interest of the security holder and the amount of such market value plus any damages for injurious affection shall stand in place of the land for the purposes of the security.

Payment  
out of  
market  
value

(2) Security holders shall be paid the amount of principal and interest outstanding against the security out of the market value of the land and any damages for injurious affection payable in respect of the land subject to the security, in accordance with their priorities, whether or not such principal and interest is due, without any bonus for prepayment except as provided in section 21.

Idem

(3) Where land held as security is expropriated in part or is injuriously affected a security holder is entitled to be paid to the extent possible in accordance with his priority, out of the market value portion of the compensation and any damages for injurious affection therefor, as the case may be, a sum that is in the same ratio to such portion of the compensation and damages as the balance outstanding on the security at the date of the expropriation or injurious affection is to the market value of the entire land, provided however, that the sum so determined shall be reduced by the amount of any payments made to the security holder by the owner after the date of expropriation or injurious affection.

Allowance  
for  
disturbance:  
owner other  
than tenant

**18.—(1)** The expropriating authority shall pay to an owner other than a tenant, in respect of disturbance, such reasonable costs as are the natural and reasonable consequences of the expropriation, including,

- (a) where the premises taken include the owner's residence, an allowance to compensate for inconvenience and the cost of finding another residence of 5 per

cent of the compensation payable in respect of the market value of that part of the land expropriated that is used by the owner for residential purposes, provided that such part was not being offered for sale on the date of the expropriation;

- (b) where the premises taken do not include the owner's residence, the owner's costs of finding premises to replace those expropriated, provided that the lands were not being offered for sale on the date of expropriation; and
- (c) relocation costs, including,
  - (i) the moving costs, and
  - (ii) the legal and survey costs and other non-recoverable expenditures incurred in acquiring other premises.

(2) The expropriating authority shall pay to a tenant<sup>tenant</sup> occupying expropriated land such compensation for disturbance and relocation as is appropriate having regard to,

- (a) the length of the term;
- (b) the portion of the term remaining;
- (c) any rights to renew the tenancy or the reasonable prospects of renewal;
- (d) in the case of a business, the nature of the business; and
- (e) the extent of the tenant's investment in the land.  
*New.*

**19.**—(1) Where a business is located on the land expropriated, the expropriating authority shall pay compensation for business loss<sup>Business loss</sup> resulting from the relocation of the business made necessary by the expropriation and, unless the owner and the expropriating authority otherwise agree, the business losses shall not be determined until the business has moved and been in operation for six months or until a three-year period has elapsed, whichever occurs first.

(2) The Board may, in determining compensation on the application of the expropriating authority, or an owner, include an amount not exceeding the value of the good will<sup>Good will</sup> of a business where the land is valued on the basis of its existing use and, in the opinion of the Board, it is not feasible for the owner to relocate. *New.*

Improve-  
ment

**20.** The owner of residential lands shall be compensated for improvements the value of which are not reflected in the market value of the land. *New.*

Prepayment  
of mortgage

**21.** Where a statutory authority prepays a mortgage in whole or in part, the statutory authority,

(a) shall pay to the mortgagee a bonus in respect of the prepayment amounting to,

(i) three months interest on the principal outstanding under the mortgage at the rate of 5 per cent a year or at such other rate as is prescribed by the Lieutenant Governor in Council by regulation, or

(ii) the value of any notice or bonus for prepayment provided for in the mortgage,

whichever is the lesser;

(b) shall pay to the mortgagee where,

(i) the prevailing interest rate for an equivalent investment is lower than the rate under the mortgage, and

(ii) there is no provision in the mortgage permitting prepayment at the date of the expropriation,

an amount to compensate for the difference in the interest rates for the period for which the payment of principal provided for in the mortgage has been advanced, not to exceed five years; and

(c) shall pay to the mortgagor whose interest is expropriated an amount to compensate for any loss incurred by reason of a difference in the interest rates during the period for which the payment of principal provided for in the mortgage has been advanced, but such difference shall not be calculated on a new interest rate any greater than the prevailing interest rate for an equivalent mortgage. *New.*

Compen-  
sation for  
injurious  
affection

**22.** A statutory authority shall compensate the owner of land for loss or damage caused by injurious affection. 1962-63, c. 43, s. 6 (1), *amended.*

Claim for  
compen-  
sation for  
injurious  
affection

**23.—**(1) Subject to subsection 2, a claim for compensation for injurious affection shall be made by the person suffering the damage or loss in writing with particulars of the claim

within one year after the damage was sustained or after it became known to him, and, if not so made, the right to compensation is forever barred.

(2) Where the person who is injuriously affected is an infant, a mental incompetent or a person incapable of managing his affairs, his claim for compensation shall be made within one year after he ceased to be under the disability or, in the case of his death while under the disability, within one year after his death, and, if not so made, the right to compensation is forever barred. 1962-63, c. 43, s. 7, *amended*.

**24.** The value of any advantage to the land or remaining land of an owner derived from any work for which land was expropriated or by which land was injuriously affected shall be set-off only against the amount of the damages for injurious affection to the owner's land or remaining lands. *New*.

**25.**—(1) Where no agreement as to compensation has been made with the owner, the expropriating authority shall, within three months after the registration of a plan under section 9 and before taking possession of the land, serve upon the registered owner,

- (a) an offer of an amount in full compensation for his interest; and
- (b) where the registered owner is not a tenant, a statement of the total compensation being offered for all interests in the land,

and shall offer the registered owner immediate payment of 100 per cent of the amount of the market value of the owner's land as estimated by the expropriating authority, and the payment and receipt of that sum is without prejudice to the rights conferred by this Act in respect of the determination of compensation and is subject to adjustment in accordance with any compensation that may subsequently be determined in accordance with this Act or agreed upon. 1962-63, c. 43, s. 8 (1), 18, *amended*.

(2) The expropriating authority shall base its offer of compensation made in subsection 1 upon a report appraising the market value of the lands being taken and damages for injurious affection, and shall serve a copy of the appraisal report upon the owner at the time the offer is made. *New*.

(3) The expropriating authority may, within the period mentioned in subsection 1 and before taking possession of the land, upon giving at least two days notice to the registered owner, apply to the judge for an order extending the time for serving the offer under subsection 1.



Failure  
to serve

(4) If any registered owner is not served with the offer required to be served on him under subsection 1 within the time limited by subsection 1 or by an order of a judge under subsection 3, or by agreement, the failure does not invalidate the expropriation but interest upon the unpaid portion of any compensation payable to such registered owner shall be calculated from the date of registration of the plan. 1962-63, c. 43, s. 8 (1-3), *amended*.

Choice of  
proceedings,  
negotiation  
or  
arbitration

**26.** Where the statutory authority and the owner have not agreed upon the compensation payable under this Act and in the case of injurious affection, section 23 has been complied with, or, in the case of expropriation, section 25 has been complied with or the time for complying therewith has expired,

- (a) the statutory authority or the owner may serve notice of negotiation upon the other of them and upon the board of negotiation stating that it or he, as the case may be, requires the compensation to be negotiated under section 27; or
- (b) where the statutory authority and the owner have agreed to dispense with negotiation proceedings, the statutory authority or the owner may serve notice of arbitration upon the other of them and upon the Board to have the compensation determined by arbitration. 1965, c. 38, s. 2, *part, amended*.

Board of  
negotiation

**27.**—(1) A board of negotiation shall be established consisting of two or more members appointed by the Lieutenant Governor in Council, one of whom may be designated as chairman.

Quorum

(2) Any two of the members of the board of negotiation constitute a quorum and are sufficient to perform all the functions of the board on behalf of the board.

Place of  
sitting

(3) The board of negotiation may sit at any place in Ontario.

Negotiation  
of amount  
of compen-  
sation

(4) In any case in which a notice of negotiation is served, the board of negotiation shall, upon reasonable notice to the statutory authority and the owner, meet with them and, without prejudice to any subsequent proceedings, proceed in a summary and informal manner to negotiate a settlement of the compensation.

Inspection  
of land

(5) Before or during the negotiation proceedings, the board of negotiation shall inspect the land that has been expropriated or injuriously affected.

(6) If the negotiation proceedings do not result in a settlement of the compensation, the statutory authority or the owner may serve notice of arbitration upon the other of them, and upon the Board, stating that it or he, as the case may be, requires the compensation to be determined by arbitration as though the negotiation proceedings had not taken place. 1965, c. 38, s. 2, *part, amended*. Where no settlement reached

**28.**—(1) The Land Compensation Board is established and shall be composed of a chairman and such number of vice-chairmen and other members as the Lieutenant Governor in Council considers advisable, all of whom shall be appointed by the Lieutenant Governor in Council. Land Compensation Board

(2) The chairman and vice-chairmen shall be members of the bar of one of the provinces of Canada. Qualifications of chairman and vice-chairmen

(3) The chairman or a vice-chairman and two other members of the Board constitute a quorum and are sufficient for the exercise of all the jurisdiction and powers of the Board, except that in matters respecting a claim for compensation not exceeding \$1,000, one member of the Board constitutes a quorum and is sufficient for the exercise of all the jurisdiction of the Board. Quorum

(4) The Board may, Powers of Board

(a) administer oaths to witnesses and require them to give evidence under oath;

(b) may issue summonses requiring the attendance of witnesses and the production of documents and things;

(c) hold sittings at any place in Ontario and in more than one place at the same time.

(5) If any person, Enforcement of summons

(a) on being duly summoned as a witness before the Board makes default in attending; or

(b) being in attendance as a witness refuses to take an oath legally required by the Board to be taken, or to produce any document or thing in his power or control legally required by the Board to be produced by him, or to answer any question to which the Board may legally require an answer; or

(c) does any other thing that would, if the Board had been a court of law having power to commit for contempt, have been contempt of that court,

a member of the Board may certify the offence of that person under his hand to the High Court, and the court may thereupon inquire into the alleged offence and after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statement that may be offered in defence, punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of the court.

Practice  
and  
procedure

(6) Subject to the approval of the Lieutenant Governor in Council, the Board shall make rules governing its practice and procedure and the exercise of its powers.

Registrar  
and  
employees  
1961-62,  
c. 121

(7) A registrar and such other officers and employees of the Board as are considered necessary shall be appointed under *The Public Service Act, 1961-62. New.*

Service of  
appraisal  
reports

**29.** At least five days before the date fixed for the hearing of an application before the Board, any party to the application shall serve upon each other party a copy of any appraisal report upon which it intends to rely at the hearing. *New.*

Duties of  
Board

**30.—**(1) The Board shall determine any compensation in respect of which a notice of arbitration has been served upon it under section 26 or 27, and, in the absence of agreement determine any other matter required by this or any other Act, to be determined by the Board.

Record

(2) All oral evidence submitted before the Board shall be taken down in writing and, together with such documentary evidence and things as are received in evidence by the Board, form the record.

Reasons

(3) The Board shall prepare and furnish the parties to an application with written reasons for its decision. *New.*

Stated  
case

**31.—**(1) Where the jurisdiction of the Board or the validity of any decision, order, direction or other act of the Board is called into question by any person affected, the Board, upon the request of such person, shall state a case in writing to the Court of Appeal setting forth the material facts and the decision of the court thereon is final and binding.

Order  
directing  
stated case

(2) If the Board refuses to state a case, any person affected may apply to the Court of Appeal for an order directing the Board to state a case.

Proceedings  
stayed  
until case  
determined

(3) Pending the decision of the stated case, no further proceedings in respect of the application shall be taken by the Board. *New.*

**32.**—(1) An appeal lies to the Court of Appeal from any <sup>Appeals</sup> determination or order of the Board.

(2) The practice and procedure as to the appeal and <sup>Idem</sup> proceedings incidental thereto are the same *mutatis mutandis* as upon an appeal from the High Court, except that the appeal may be taken at any time within six weeks from the day the determination or order was served on the parties, and the period of any vacation of the Supreme Court shall not be reckoned in computing such six weeks.

(3) An appeal under subsection 1 may be made on questions <sup>Powers of Court of Appeal</sup> of law or fact or both and the Court of Appeal,

(a) may refer any matter back to the Board; or

(b) may make any decision or order that the Board has power to make,

and may exercise the same powers that it exercises on an appeal from a judge of the High Court sitting without a jury.

(4) A judge of the Court of Appeal may extend the time <sup>Extension of time for appeal</sup> for appeal for such period as he considers proper. 1962-63, c. 43, s. 11, *amended*.

**33.**—(1) Where the amount to which an owner is entitled <sup>Legal, appraisal and other costs</sup> upon an expropriation is determined by the Board and the amount offered by the statutory authority is 95 per cent, or less, of the amount awarded by the Board, the statutory authority shall pay the reasonable legal, appraisal and other costs actually incurred by the owner for the purposes of determining the compensation payable.

(2) Where the amount to which an owner is entitled upon <sup>Idem</sup> an expropriation is determined by the Board and the amount offered by the statutory authority is greater than 95 per cent of the amount awarded by the Board, the Board may make such order for the payment of costs on a party and party basis as it considers appropriate. 1962-63, c. 43, s. 13, *amended*.

**34.**—(1) Subject to subsection 1 of section 9 and sub-<sup>Interest</sup>section 3 of section 25, the owner of lands expropriated is entitled to be paid interest on the portion of the market value of his interest in the land and on the portion of any allowance for injurious affection to which he is entitled, outstanding from time to time, at the rate of 5 per cent a year calculated from the date the owner ceases to reside on or make productive use of the lands.



Variation of  
interest

(2) Subject to subsection 3, where the Board is of the opinion that any delay in determining the compensation is attributable in whole or in part to the owner, it may refuse to allow him interest for the whole or any part of the time for which he might otherwise be entitled to interest, or may allow interest at such rate less than 5 per cent a year as appears reasonable.

Idem

(3) The interest to which an owner is entitled under subsection 1 shall not be reduced for the reason only that the owner did not accept the offer made by the expropriating authority, notwithstanding that the compensation as finally determined is less than the offer.

Idem

(4) Where the Board is of the opinion that any delay in determining compensation is attributable in whole or in part to the expropriating authority, the Board may order the expropriating authority to pay to the owner interest under subsection 1 at a rate exceeding 5 per cent a year but not exceeding 10 per cent a year. 1962-63, c. 43, s. 14, *amended*.

Abatement  
of rent

**35.**—(1) Subject to subsection 2, where only part of the interest of a lessee is expropriated, the lessee's obligation to pay rent under the lease shall be abated *pro tanto*, as determined by the Board.

Frustration  
of lease

(2) Where all the interest of a lessee in land is expropriated or where part of the lessee's interest is expropriated and the expropriation renders the remaining part of the lessee's interest unfit for the purposes of the lease, as determined by the Board, the lease shall be deemed to be frustrated from the date of the expropriation. *New*.

Character  
of compen-  
sation

**36.** Where land has been expropriated, the compensation stands in the stead of the land, and any claim to or encumbrance on the land is, as respects the expropriating authority, converted into a claim to or upon the compensation and no longer affects the land.

Payment  
of compen-  
sation not  
exceeding  
\$1,000

**37.** Where the owner who is entitled to convey the land that has been expropriated or injuriously affected and the statutory authority agree as to the compensation or the compensation has been determined and in either case it does not exceed \$1,000, the statutory authority may pay the compensation to the owner who is entitled to convey the land, saving always the rights of any other person to the compensation as against the person receiving it, and such payment discharges the statutory authority from all liability in respect of the compensation. 1962-63, c. 43, s. 15.

**38.** Where an owner of the land is unknown, is under a disability or for any other reason is not represented, a judge of the Supreme Court may, after due notice to the persons interested, appoint a person to represent such owner for any of the purposes of this Act, and any action of a person so appointed is binding on the person whom he represents. 1962-63, c. 43, s. 16.

**39.**—(1) In any case where the statutory authority deems it advisable, it may, without an order, pay the compensation agreed upon or determined into the office of the Accountant of the Supreme Court together with a sum equal to the interest thereon at the rate of 5 per cent a year for six months.

(2) Upon an application for payment out of court of compensation paid into court, a judge of the Supreme Court may direct that such notice of the application be given by publication or otherwise as he deems proper and may direct the trial of an issue or make such order with respect to the payment out of court of compensation and as to costs as he deems reasonable.

(3) Where an order is obtained under subsection 2 in less than six months after the payment of the compensation into court, the judge making the order may direct that a proportionate part of the interest be returned to the statutory authority.

(4) Where unborn issue or an unascertained person or class is interested in compensation paid into court, a judge of the Supreme Court may appoint such person as he deems proper to represent them, and any order made under this section is binding on them. 1962-63, c. 43, s. 17.

**40.**—(1) Where land that has been expropriated is vested in an expropriating authority and the expropriating authority has served the registered owner with a notice that it requires possession of the land on the date specified therein, the expropriating authority, subject to any agreement to the contrary and if no application is made under subsection 3, shall take possession of the land on the date specified in the notice.

(2) The date for possession shall be at least ten days after the date of the serving of the notice of possession.

(3) A registered owner or an expropriating authority may, upon such notice as the judge directs, apply to a judge for an adjustment of the date for possession specified in the

notice of possession, and the judge, if he considers that under all the circumstances the application should be granted, may fix the date for possession. 1962-63, c. 43, s. 19, *amended*.

Warrant to  
put down  
resistance  
to entry,  
etc.

**41.**—(1) Where resistance or opposition is made to the expropriating authority or any person authorized by it in entering upon, using or taking possession of land when it is entitled so to do, it may apply to a judge for a warrant directing the sheriff to put down the resistance or opposition.

Hearing

(2) The judge shall, in writing, appoint a time and place for the hearing of the application and in his appointment may direct that it shall be served upon such person as he prescribes.

Issue of  
warrant

(3) On proof of the resistance or opposition, the judge may issue a warrant.

Return

(4) The sheriff shall forthwith execute the warrant and make a return to the judge of the execution thereof. 1962-63, c. 43, s. 20, *amended*.

Abandon-  
ment of  
expropri-  
ated land

**42.**—(1) Where, at any time before the compensation upon an expropriation is paid in full, the land or any part thereof is found to be unnecessary for the purposes of the expropriated authority or if it is found that a more limited estate or interest therein only is required, the expropriating authority shall so notify each owner of the abandoned land, or estate or interest, who is served or entitled to be served with the notice of expropriation, who may, by election in writing,

- (a) take the land, estate or interest back, in which case he has the right to compensation for consequential damages; or
- (b) require the expropriating authority to retain the land, estate or interest, in which case he has the right to full compensation therefor. *New*.

Revesting

(2) Where all the owners elect to take the land, estate or interest back under clause *a* of subsection 1, the expropriating authority may, by an instrument signed by it and registered in the proper registry or land titles office and served on each owner, declare that the land or part thereof is not required and is abandoned by the expropriating authority or that it is intended to retain only such limited estate or interest as is mentioned in the instrument, and thereupon,

- (a) the land declared to be abandoned reverts in the owner from whom it was expropriated and those entitled to claim under him; or

- (b) in the event of a limited estate or interest only being retained by the expropriating authority, the land so reverts subject to such limited estate or interest. 1962-63, c. 43, s. 21 (1), *amended*.

**43.** Where lands that have been expropriated and are in the possession of the expropriating authority, are found by the expropriating authority to be no longer required for its purposes, the expropriating authority shall not, without the approval of the approving authority, dispose of the lands without giving the owners from whom the land was taken the first chance to repurchase the lands on the terms of the best offer received by the expropriating authority. *New.*

**44.** Any application to set aside or quash any proceeding or step taken under this Act shall be made within thirty days after the proceeding or step in respect of which the application is made, but this section does not apply where the applicant was entitled to and not given notice of the proceeding or step or where the proceeding or step was a nullity. *New.*

**45.** The Lieutenant Governor in Council may make regulations,

- (a) prescribing rates of interest for the purposes of section 21;
- (b) prescribing forms for the purposes of this Act and providing for their use;
- (c) prescribing procedures respecting applications to and hearings by inquiry officers and boards of negotiation. *New.*

**46.**—(1) Sections 13 to 21 apply in respect of expropriations for which the compensation has not been settled or determined before this Act comes into force.

(2) Until section 28 is proclaimed in force, the Ontario Municipal Board shall be deemed to be the Land Compensation Board. *New.*

**47.** *The Expropriation Procedures Act, 1962-63, The Expropriation Procedures Amendment Act, 1965 and The Expropriation Procedures Amendment Act, 1966* are repealed.

**48.**—(1) This Act, except section 28, comes into force on the day it receives Royal Assent.

Idem (2) Section 28 comes into force on a day to be named by the Lieutenant Governor by his proclamation.

Short title **49.** This Act may be cited as *The Expropriations Act, 1968-69*.











The Expropriations Act, 1968-69

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*1st Reading*

November 25th, 1968

*2nd Reading*

*3rd Reading*

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MR. WISHART

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## BILL 5

Government  
Publications

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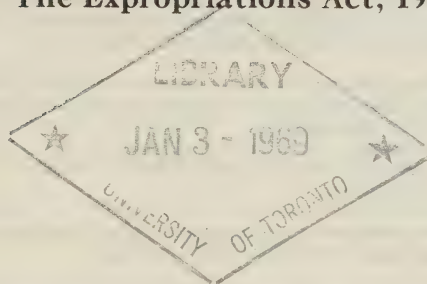
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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

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**The Expropriations Act, 1968-69**



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MR. WISHART

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*(Reprinted as amended by the Committee of the Whole House)*

#### EXPLANATORY NOTE

The Bill revises *The Expropriation Procedures Act, 1962-63* and incorporates the principal recommendations of the Law Reform Commission in its report on the Basis for Compensation on Expropriation and of the Royal Commission Inquiry into Civil Rights in section 1 of Part III of its first report.

The principal changes include:

1. Provision for approval by a politically responsible authority before an expropriation may proceed and an inquiry to determine the necessity, fairness and soundness of any particular expropriation.
2. The time limits are amended to reduce the time available for delays to an expropriating authority and to increase the time available to the owner before giving possession.
3. The Land Compensation Board is established to replace all tribunals determining compensation.
4. More particular provisions for procedures on arbitrations, including provisions for appeals, stated cases and quashing.
5. Provision for expropriated land intended to be abandoned to revert in the owner or to be taken and compensated for, at the option of the owner.
6. The owner to have an opportunity to repurchase his expropriated land if the expropriating authority disposes of it.
7. More detailed codification of the rules governing compensation.
8. Provision for compensation for market value plus expanded compensation for disturbance costs and damages for injurious affection.
9. Provision for awarding additional amounts sufficient to provide other accommodation at least equivalent.

## BILL 5

1968-69

## The Expropriations Act, 1968-69

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

## 1.—(1) In this Act,

Interpre-  
tation

(a) “approving authority” means the approving authority as determined under section 5;

(b) “Board” means the Land Compensation Board established under section 28;

(c) “expropriate” means the taking of land without the consent of the owner by an expropriating authority in the exercise of its statutory powers, but does not include the taking of land for the widening of a highway where entry is deferred under section 338 of *The Municipal Act*;

R.S.O. 1960  
c. 249

(d) “expropriating authority” means the Crown or any person empowered by statute to expropriate land;

(e) “injurious affection” means,

(i) where a statutory authority acquires part of the land of an owner,

a. the reduction in market value thereby caused to the remaining land of the owner by the acquisition or by the construction of the works thereon or by the use of the works thereon or any combination of them, and

b. such personal and business damages, resulting from the construction or use, or both, of the works as the statutory authority would be liable for if the construction or use were not under the authority of a statute,

(ii) where the statutory authority does not acquire part of the land of an owner,

a. such reduction in the market value of the land of the owner, and

b. such personal and business damages,

resulting from the construction and not the use of the works by the statutory authority, as the statutory authority would be liable for if the construction were not under the authority of a statute,

and for the purposes of this clause, part of the lands of an owner shall be deemed to have been acquired where the owner from whom lands are acquired retains lands contiguous to those acquired or retains lands of which the use is enhanced by unified ownership with those acquired;

(f) "judge", except where otherwise described, means a judge of the county or district court of the county or district in which the land or the greater part of it is situate;

(g) "land" includes any estate, term, easement, right or interest in, to, over or affecting land;

(h) "owner" includes a mortgagee, tenant, execution creditor, a person entitled to a limited estate or interest in land, a committee of the estate of a mentally incompetent person or of a person incapable of managing his affairs, and a guardian, executor, administrator or trustee in whom land is vested;

(i) "prescribed" means prescribed by the regulations made under this Act;

(j) "purchase-money mortgage" means a mortgage given by a purchaser of land to the vendor of the land or his nominee as security for the payment of all or part of the consideration for the sale;

(k) "registered owner" means an owner of land whose interest in the land is defined and whose name is specified in an instrument in the proper registry, land titles or sheriff's office, and includes a person shown as a tenant of land on the last revised assessment roll;

- (l) "security holder" means a person who has an interest in land as security for the payment of money;
- (m) "statutory authority" means the Crown or any person empowered by statute to expropriate land or cause injurious affection. 1962-63, c. 43, s. 1, *amended*.
- (n) "tenant" includes a lessee or occupant occupying premises under any tenancy whether written, oral or implied.

(2) Any document required by this Act to be served may be served personally or by registered mail addressed to the person to be served at his last-known address, or if that person or his address is unknown, by publication once a week for three weeks in a newspaper having general circulation in the locality in which the land concerned is situate and service shall be deemed to be made, Service

- (a) in the case of service by registered mail, on the second day after the day of mailing; and
- (b) in the case of service by publication, on the date of the third publication. *New*.

**2—**(1) Notwithstanding any general or special Act, where land is expropriated or injurious affection is caused by a statutory authority, this Act applies. 1962-63, c. 43, s. 2 (1), *amended*. Application of Act

(2) The provisions of any general or special Act providing procedures with respect to the expropriation of land or the compensation payable for land expropriated or for injurious affection that refer to *The Municipal Act*, *The Public Works Act* or any other Act shall be deemed to refer to this Act and not to *The Municipal Act*, *The Public Works Act* or other Act, as the case may be. 1962-63, c. 43, s. 2 (5). References in other Acts to R.S.O. 1960, cc. 249, 338, deemed references to this Act

(3) This Act does not apply to the use of or injury to land authorized under *The Drainage Act*, 1962-63 for the purposes of a drainage works constructed under that Act or to any proceedings in connection therewith. 1965, c. 38, s. 1. Application to 1962-63, c. 39

(4) Where there is conflict between a provision of this Act and a provision of any other general or special Act, the provision of this Act prevails. 1962-63, c. 43, s. 2 (4). Conflict

**3.** This Act binds the Crown. 1962-63, c. 43, s. 3.

Crown bound by Act

**4.—**(1) An expropriating authority shall not expropriate land without the approval of the approving authority as determined under section 5. Approval of intention to expropriate



Gas storage  
areas  
excepted  
1964, c. 74

(2) Subsection 1 does not apply to an authorization of the Ontario Energy Board under *The Ontario Energy Board Act, 1964* in respect of storage of gas in a gas storage area or to an expropriation authorized under section 40 of that Act. *New.*

Approving  
authority

5.—(1) Subject to subsections 3, 4 and 5, the approving authority in respect of an expropriation shall be the Minister responsible for the administration of the Act in which the power to expropriate is granted, except that,

(a) where a municipality or a local board thereof, other than an elected school board, expropriates lands for municipal purposes, the approving authority shall be the council of the municipality; and

(b) where an elected school board expropriates lands, the approving authority shall be the school board.

Idem,  
private  
Acts

(2) Where the power to expropriate is granted in a private Act, the approving authority shall be,

(a) in the case of universities or other educational institutions, the Minister of University Affairs;

(b) in the case of hospitals or other medical or health institutions, the Minister of Health; and

(c) in the case of all other corporations, the Provincial Secretary and Minister of Citizenship.

Idem,  
public  
works  
R.S.O. 1960,  
c. 338

(3) Where an expropriation is made under *The Public Works Act* for the benefit of a department or agency of the Ontario Government, the approving authority shall be the Minister for the department or responsible for the agency for the benefit of which the land is expropriated.

Idem,  
Power  
Commission  
R.S.O. 1960,  
c. 300

(4) Where an expropriation is made under *The Power Commission Act*, the approving authority shall be the Minister of Energy and Resources Management.

Idem,  
other cases

(5) The approving authority in any case not provided for in this section shall be the Minister of Justice and Attorney General. *New.*

Notice of  
intention  
to expro-  
pate

6.—(1) Upon applying for an approval under section 4, an expropriating authority shall serve a notice of its application for approval to expropriate upon each registered owner of the lands to be expropriated and shall publish the notice once a week for three consecutive weeks in a newspaper having general circulation in the locality in which the lands are situate.

(2) Any owner of lands in respect of which notice is given <sup>Notification for hearing</sup> under subsection 1 who desires a hearing, shall so notify the approving authority in writing,

(a) in the case of a registered owner, served personally or by registered mail within thirty days after he is served with the notice, or, when he is served by publication, within thirty days after the first publication of the notice;

(b) in the case of an owner who is not a registered owner, within thirty days after the first publication of the notice.

(3) The Lieutenant Governor in Council may, in special <sup>Order dispensing with inquiry</sup> circumstances where he deems it necessary or expedient in the public interest to do so, direct that an intended expropriation shall proceed without the inquiry procedure and thereupon subsections 1 and 2 of this section, section 7 and subsections 1 and 2 of section 8 do not apply thereto.

(4) Where an order is made under subsection 3, the expropriating authority shall forthwith serve a copy of the order on each registered owner affected by the intended expropriation. <sup>Service of order</sup>

(5) The Minister of Justice and Attorney General shall, <sup>Report to assembly</sup> within thirty days after the commencement of each session of the Legislative Assembly, lay before the Assembly a copy of each order made theretofore under subsection 3 and not previously laid before the Assembly. *New.*

7.—(1) The Minister of Justice and Attorney General <sup>Appointment of inquiry officers</sup> shall appoint a chief inquiry officer and such inquiry officers as he considers necessary.

(2) The chief inquiry officer shall have general supervision <sup>Duties of chief inquiry officer</sup> and direction over inquiry officers and the assignment of their duties.

(3) Where a notification is made under subsection 2 of <sup>Hearing</sup> section 6, the approving authority shall refer the matter to the chief inquiry officer who shall forthwith assign an inquiry officer who shall fix a time and place for a hearing and who shall cause notice of the hearing to be served on each party to the inquiry.

(4) At least five days before the date fixed for the hearing, <sup>Notice of grounds</sup> the expropriating authority shall serve upon each party to the inquiry a notice indicating the grounds upon which it intends to rely at the hearing and shall make available for inspection by the parties any documents, including maps and plans, that the expropriating authority intends to use at the hearing.



## Inquiry

(5) The hearing shall be by means of an inquiry conducted by the inquiry officer who shall inquire into whether the taking of the lands or any part of the lands of an owner or of more than one owner of the same lands is fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority.

## Report

(6) The inquiry officer shall report to the approving authority a summary of the evidence and arguments advanced by the parties, the inquiry officer's findings of fact, and his opinion on the merits of the application for approval with his reasons therefor.

## Combined inquiries

(7) The inquiry officer may combine two or more related inquiries and conduct them in all respects and for all purposes as one inquiry.

## Parties

(8) The expropriating authority, each owner who notifies the approving authority that he desires a hearing in respect of the lands intended to be expropriated and any owner added as a party by the inquiry officer are parties to the inquiry.

## Powers and duties of inquiry officer

(9) The inquiry officer,

- (a) may add any owner whose land would be affected by the expropriation of the lands concerned in the inquiry or any modification thereof as a party to the inquiry;
- (b) shall give every party to the inquiry an opportunity to present evidence and argument and to examine and cross-examine witnesses, either personally or by his counsel or agent;
- (c) is not bound by the technical or legal rules of evidence; and
- (d) may inspect the lands concerned either alone or in the presence of the parties.

## Costs

(10) The inquiry officer may recommend to the approving authority that a party to the inquiry be paid a fixed amount for his costs of the inquiry not to exceed \$200 and the approving authority may in its discretion order the expropriating authority to pay such costs forthwith. *New.*

## Powers and duties of approving authority

**8.—**(1) The approving authority shall consider the report of the inquiry officer and shall approve or not approve the proposed expropriation or approve the proposed expropri-

ation with such modifications as the approving authority considers proper, but an approval with modifications shall not affect the lands of a registered owner who is not or has not been made a party to the hearing.

(2) The approving authority shall give written reasons for its decision and shall cause its decision and the reasons therefor to be served upon all the parties within 90 days after the date upon which the report of the inquiry officer is received by the approving authority. <sup>Reasons</sup>

(3) The approving authority shall certify its approval in the prescribed form. *New.* <sup>Certificate</sup>

9.—(1) Where a proposed expropriation has been approved under this Act or under *The Ontario Energy Board Act, 1964*, the expropriating authority shall register, within three months after the granting of the approval in the proper registry or land titles office a plan of the land signed by the expropriating authority and by an Ontario land surveyor, and thereupon, but not otherwise, the land vests in the expropriating authority. <sup>Registration of plan, 1964, c. 74</sup>

(2) Where the land is required for a limited time only or only a limited estate, right or interest therein is required, the plan registered under this section shall indicate by appropriate words thereon that the land is taken for such limited time only or that only such limited estate, right or interest therein is taken, and, by the registration in such case, the land for such limited time or such limited estate, right or interest therein vests in the expropriating authority. <sup>Where land required temporarily, etc.</sup>

(3) In the case of an omission, misstatement or erroneous description in a plan registered under this section, the expropriating authority may register in the proper registry or land titles office a plan replacing or amending the original plan and signed by the expropriating authority and by an Ontario land surveyor, and a plan registered under this subsection shall be marked to show the nature of the replacement or amendment and is of the same force and effect as, and is in substitution for, the original plan to the extent that such plan is replaced or amended thereby. <sup>Correction of errors</sup>

(4) Where a plan purports to have been signed by an expropriating authority under this section, it shall be presumed to have been signed by the expropriating authority without proof of the signature or official character of the person appearing to have signed it, unless otherwise directed by a court or the Board. <sup>Presumption as to signing</sup>

Ontario  
Hydro  
R.S.O. 1960,  
c. 300

(5) Where a limited estate, right or interest in land is being taken under *The Power Commission Act* for an electrical transmission or distribution line carried on single poles, The Hydro-Electric Power Commission of Ontario may, before registering a plan under subsection 1, register in the proper registry or land titles office a preliminary plan, to be known as and marked "Preliminary Plan" and being a plan with or without local description, signed by the secretary of the Commission and illustrating the location of the proposed line and indicating by appropriate words thereon the nature of the estate, right or interest being taken, and such preliminary plan when registered has the same force and effect as a plan registered under subsection 1, but a plan in accordance with subsection 1 shall be registered within two years after the registration of the preliminary plan in substitution for the preliminary plan. 1962-63, c. 43, s. 4, *amended*.

Notice of  
expro-  
priation

**10.**—(1) Where a plan has been registered under section 9 and no agreement as to compensation has been made with the owner, the expropriating authority may serve the owner, and shall serve the registered owner, within thirty days after the date of registration of the plan, with a notice of expropriation of his land, in the prescribed form, but failure to serve the notice does not invalidate the expropriation.

Election of  
date for  
compen-  
sation

(2) Where a plan has been registered under section 9, the registered owner may elect, by notice in writing served upon the expropriating authority, within thirty days after the owner was served with the notice under subsection 1, to have the compensation to which he is entitled assessed,

- (a) where there has been an inquiry, as of the date the notice of hearing before the inquiry officer was served;
- (b) as of the date of the registration of the plan; or
- (c) as of the date on which he was served with the notice of expropriation.

and, where the election is not made within the prescribed time, the owner shall be deemed to have elected to have the compensation assessed as of the date of the registration of the plan. 1962-63, c. 43, s. 5, *amended*.

Entry on  
land for  
appraisal

(3) An expropriating authority may, after it has served notice of expropriation on the owner in possession of the lands expropriated, and with the consent of the said owner, enter on the expropriated lands for the purposes of viewing for appraisal, but, where the consent of the owner is not given,

the expropriating authority may apply to the Board which may, by order, authorize the entry upon such terms and conditions as are specified in the order. *New.*

**11.** Where land is expropriated or is injuriously affected by a statutory authority, the statutory authority may, before the compensation is agreed upon or determined, undertake to make alterations or additions or to construct additional work or to grant other lands, in which case the compensation shall be determined having regard to such undertaking, and, if the undertaking has not already been carried out, the Board may declare that, in addition to the compensation determined, if any, the owner is entitled to have such alteration or addition made or such additional work constructed or such grant made to him. 1962-63, c. 43, s. 6 (2), *amended*. <sup>Reparation</sup>

**12.** Section 21 of *The Ontario Energy Board Act, 1964* <sup>Gas storage areas</sup> applies in respect of the use of designated gas storage areas. 1964, c. 74 1965, c. 38, s. 2, *part, amended*.

**13.**—(1) Where land is expropriated, the expropriating authority shall pay the owner such compensation as is determined in accordance with this Act. 1962-63, c. 43, s. 6 (1), *amended*. <sup>Compensation</sup>

(2) Where the land of an owner is expropriated, the compensation payable to the owner shall be based upon, <sup>Idem</sup>

- (a) the market value of the land;
- (b) the damages attributable to disturbance;
- (c) damages for injurious affection; and
- (d) any special difficulties in relocation,

but, where the market value is based upon a use of the land other than the existing use, no compensation shall be paid under clause *b* for damages attributable to disturbance that would have been incurred by the owner in using the land for such other use. *New.*

**14.**—(1) The market value of land expropriated is the amount that the land might be expected to realize if sold in the open market by a willing seller to a willing buyer. <sup>Market value</sup>

(2) Where the land expropriated is devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, and the owner intends in good faith to relocate in similar premises, the market value shall be deemed to be the reasonable cost of equivalent re-instatement. <sup>Idem</sup>



Idem

(3) Where only part of the land of an owner is taken and such part is of a size, shape or nature for which there is no general demand or market, the market value and the injurious affection caused by the taking may be determined by determining the market value of the whole of the owner's land and deducting therefrom the market value of the owner's land after the taking.

Idem

(4) In determining the market value of land, no account shall be taken of,

- (a) the special use to which the expropriating authority will put the land;
- (b) any increase or decrease in the value of the land resulting from the imminence of the development in respect of which the expropriation is made or from any imminent prospect of expropriation;
- (c) any increase in the value of the land resulting from the land being put to a use that could be restrained by any court or is contrary to law or is detrimental to the health of the occupants of the land or to the public health. *New.*

Increase  
by Board

**15.** Upon application therefor, the Board shall, by order, after fixing the market value of lands used for residential purposes of the owner under subsection 1 of section 14, award such additional amount of compensation as, in the opinion of the Board, is necessary to enable the owner to relocate his residence in accommodation that is at least equivalent to the accommodation expropriated. *New.*

Separate  
interests

**16.** Where there are more separate interests than one in land, other than the interest of a security holder or a vendor under an agreement for sale, the market value of each such separate interest shall be valued separately. *New.*

Interpre-  
tation

**17.—(1)** In this section, "bonus" means the amount by which the amount secured under a mortgage exceeds the amount actually advanced.

Security  
holders

(2) Where land is subject to a security interest,

- (a) the value of the interest of the security holder shall be determined in accordance with this section and section 20 and not otherwise; and
- (b) the market value of the land shall be determined without regard to the interest of the security holder and the amount of such market value plus any damages for injurious affection shall stand in place of the land for the purposes of the security.

(3) Security holders shall be paid the amount of principal and interest outstanding against the security out of the market value of the land and any damages for injurious affection payable in respect of the land subject to the security, in accordance with their priorities, whether or not such principal and interest is due and subject to subsections 4 and 5. Payment out of market value

(4) Where the land is subject to a mortgage and the amount payable to the mortgagee under subsection 3 is insufficient to satisfy the mortgage in full, Bonus

(a) where the mortgage is a purchase-money mortgage, the mortgage shall be deemed to be fully paid, satisfied and discharged for all purposes; and

(b) where the mortgage is not a purchase-money mortgage and includes a bonus,

(i) the amount by which the amount payable to the mortgagee under subsection 3 is insufficient to pay the amount remaining unpaid under the mortgage; or

(ii) the amount of the bonus,

whichever is the lesser, shall be deemed to be fully paid and satisfied for all purposes.

(5) No amount shall be paid in respect of a bonus until all security holders have been paid all amounts payable other than any bonus. Idem

(6) Where land held as security is expropriated in part or is injuriously affected a security holder is entitled to be paid to the extent possible in accordance with his priority, out of the market value portion of the compensation and any damages for injurious affection therefor, as the case may be, a sum that is in the same ratio to such portion of the compensation and damages as the balance outstanding on the security at the date of the expropriation or injurious affection is to the market value of the entire land, provided however, that the sum so determined shall be reduced by the amount of any payments made to the security holder by the owner after the date of expropriation or injurious affection. *New.* Idem

**18.—**(1) The expropriating authority shall pay to an owner other than a tenant, in respect of disturbance, such reasonable costs as are the natural and reasonable consequences of the expropriation, including, Allowance for disturbance: owner other than tenant

(a) where the premises taken include the owner's residence,

- (i) an allowance to compensate for inconvenience and the cost of finding another residence of 5 per cent of the compensation payable in respect of the market value of that part of the land expropriated that is used by the owner for residential purposes, provided that such part was not being offered for sale on the date of the expropriation, and
- (ii) an allowance for improvements the value of which is not reflected in the market value of the land;
- (b) where the premises taken do not include the owner's residence, the owner's costs of finding premises to replace those expropriated, provided that the lands were not being offered for sale on the date of expropriation; and
- (c) relocation costs, including,
  - (i) the moving costs, and
  - (ii) the legal and survey costs and other non-recoverable expenditures incurred in acquiring other premises.

Tenant

(2) The expropriating authority shall pay to a tenant occupying expropriated land in respect of disturbance so much of the cost referred to in subsection 1 as is appropriate having regard to,

- (a) the length of the term;
  - (b) the portion of the term remaining;
  - (c) any rights to renew the tenancy or the reasonable prospects of renewal;
  - (d) in the case of a business, the nature of the business; and
  - (e) the extent of the tenant's investment in the land.
- New.*

Business  
loss

**19.**—(1) Where a business is located on the land expropriated, the expropriating authority shall pay compensation for business loss resulting from the relocation of the business made necessary by the expropriation and, unless the owner and the expropriating authority otherwise agree, the business



losses shall not be determined until the business has moved and been in operation for six months or until a three-year period has elapsed, whichever occurs first.

(2) The Board may, in determining compensation on the application of the expropriating authority, or an owner, include an amount not exceeding the value of the good will of a business where the land is valued on the basis of its existing use and, in the opinion of the Board, it is not feasible for the owner to relocate. *New.*

**20.** Where a statutory authority prepays a mortgage in whole or in part, the statutory authority, <sup>Prepayment of mortgage</sup>

(a) shall pay to the mortgagee a bonus in respect of the prepayment amounting to,

(i) three months interest on the amount of principal prepaid at the rate of 6 per cent a year or at such other rate as is prescribed by the Lieutenant Governor in Council by regulation, or

(ii) the value of any notice or bonus for prepayment provided for in the mortgage,

whichever is the lesser;

(b) shall pay to the mortgagee where,

(i) the prevailing interest rate for an equivalent investment is lower than the rate under the mortgage, and

(ii) there is no provision in the mortgage permitting prepayment at the date of the expropriation,

an amount to compensate for the difference in the interest rates for the period for which the amount of principal prepaid has been advanced, not to exceed five years; and

(c) shall pay to the mortgagor whose interest is expropriated an amount to compensate for any loss incurred by reason of a difference in the interest rates during the period for which the payment of principal provided for in the mortgage has been advanced, but such difference shall not be calculated on a new interest rate any greater than the prevailing interest rate for an equivalent mortgage. *New.*

Compensation for injurious affection

**21.** A statutory authority shall compensate the owner of land for loss or damage caused by injurious affection. 1962-63, c. 43, s. 6 (1), *amended*.

Claim for compensation for injurious affection

**22.—**(1) Subject to subsection 2, a claim for compensation for injurious affection shall be made by the person suffering the damage or loss in writing with particulars of the claim within one year after the damage was sustained or after it became known to him, and, if not so made, the right to compensation is forever barred.

Idem, where owner under disability

(2) Where the person who is injuriously affected is an infant, a mental incompetent or a person incapable of managing his affairs, his claim for compensation shall be made within one year after he ceased to be under the disability or, in the case of his death while under the disability, within one year after his death, and, if not so made, the right to compensation is forever barred. 1962-63, c. 43, s. 7, *amended*.

Set-off against damages

**23.** The value of any advantage to the land or remaining land of an owner derived from any work for which land was expropriated or by which land was injuriously affected shall be set-off only against the amount of the damages for injurious affection to the owner's land or remaining lands. *New*.

Agreements

**24.** A statutory authority has the authority to make and perform an agreement with an owner in respect of any claim of the owner under this Act, including any costs of the owner and notwithstanding that this Act requires the claim to be determined by the Board. *New*.

Offer

**25.—**(1) Where no agreement as to compensation has been made with the owner, the expropriating authority shall, within three months after the registration of a plan under section 9 and before taking possession of the land,

(a) serve upon the registered owner,

(i) an offer of an amount in full compensation for his interest, and

(ii) where the registered owner is not a tenant, a statement of the total compensation being offered for all interests in the land,

excepting compensation for business loss for which the determination is postponed under subsection 1 of section 19; and

(b) offer the registered owner immediate payment of 100 per cent of the amount of the market value of

the owner's land as estimated by the expropriating authority, and the payment and receipt of that sum is without prejudice to the rights conferred by this Act in respect of the determination of compensation and is subject to adjustment in accordance with any compensation that may subsequently be determined in accordance with this Act or agreed upon. 1962-63. c. 43, ss. 8 (1), 18, *amended*.

(2) The expropriating authority shall base its offer of compensation made under subsection 1 upon a report appraising the market value of the lands being taken and damages for injurious affection, and shall serve a copy of the appraisal report upon the owner at the time the offer is made. <sup>Furnishing appraisal report</sup>

(3) The expropriating authority may, within the period mentioned in subsection 1 and before taking possession of the land, upon giving at least two days notice to the registered owner, apply to the judge for an order extending any time referred to in subsection 1, and the judge may in his order authorize the statutory authority to take possession of the land before the expiration of the extended time for serving the offer or statement under clause *a* of subsection 1 upon such conditions as are specified in the order. *New*. <sup>Extension of time</sup>

(4) If any registered owner is not served with the offer required to be served on him under subsection 1 within the time limited by subsection 1 or by an order of a judge under subsection 3, or by agreement, the failure does not invalidate the expropriation but interest upon the unpaid portion of any compensation payable to such registered owner shall be calculated from the date of registration of the plan. 1962-63, c. 43, s. 8 (1-3), *amended*. <sup>Failure to serve</sup>

**26.** Where the statutory authority and the owner have not agreed upon the compensation payable under this Act and in the case of injurious affection, section 22 has been complied with, or, in the case of expropriation, section 25 has been complied with or the time for complying therewith has expired, <sup>Choice of proceedings, negotiation or arbitration</sup>

- (a) the statutory authority or the owner may serve notice of negotiation upon the other of them and upon the board of negotiation stating that it or he, as the case may be, requires the compensation to be negotiated under section 27; or
- (b) where the statutory authority and the owner have agreed to dispense with negotiation proceedings, the statutory authority or the owner may serve notice of arbitration upon the other of them and upon the

Board to have the compensation determined by arbitration. 1965, c. 38, s. 2, *part, amended*.

Board of negotiation

**27.**—(1) A board of negotiation shall be established consisting of two or more members appointed by the Lieutenant Governor in Council, one of whom may be designated as chairman.

Quorum

(2) Any two of the members of the board of negotiation constitute a quorum and are sufficient to perform all the functions of the board on behalf of the board.

Place of sitting

(3) The board of negotiation may sit at any place in Ontario.

Negotiation of amount of compensation

(4) In any case in which a notice of negotiation is served, the board of negotiation shall, upon reasonable notice to the statutory authority and the owner, meet with them and, without prejudice to any subsequent proceedings, proceed in a summary and informal manner to negotiate a settlement of the compensation.

Inspection of land

(5) Before or during the negotiation proceedings, the board of negotiation shall inspect the land that has been expropriated or injuriously affected.

Where no settlement reached

(6) If the negotiation proceedings do not result in a settlement of the compensation, the statutory authority or the owner may serve notice of arbitration upon the other of them, and upon the Board, stating that it or he, as the case may be, requires the compensation to be determined by arbitration as though the negotiation proceedings had not taken place. 1965, c. 38, s. 2, *part, amended*.

Land Compensation Board

**28.**—(1) The Land Compensation Board is established and shall be composed of a chairman and such number of vice-chairmen and other members as the Lieutenant Governor in Council considers advisable, all of whom shall be appointed by the Lieutenant Governor in Council.

Qualifications of chairman and vice-chairmen

(2) The chairman and vice-chairmen shall be members of the bar of one of the provinces of Canada.

Quorum

(3) The chairman or a vice-chairman and two other members of the Board constitute a quorum and are sufficient for the exercise of all the jurisdiction and powers of the Board, except that in matters respecting a claim for compensation not exceeding \$1,000, one member of the Board constitutes a quorum and is sufficient for the exercise of all the jurisdiction of the Board.



## (4) The Board may,

Powers  
of Board

- (a) administer oaths to witnesses and require them to give evidence under oath;
- (b) may issue summonses requiring the attendance of witnesses and the production of documents and things;
- (c) hold sittings at any place in Ontario and in more than one place at the same time.

## (5) If any person,

- (a) on being duly summoned as a witness before the Board makes default in attending; or Enforce-  
ment of  
summons
- (b) being in attendance as a witness refuses to take an oath legally required by the Board to be taken, or to produce any document or thing in his power or control legally required by the Board to be produced by him, or to answer any question to which the Board may legally require an answer; or
- (c) does any other thing that would, if the Board had been a court of law having power to commit for contempt, have been contempt of that court,

a member of the Board may certify the offence of that person under his hand to the High Court, and the court may thereupon inquire into the alleged offence and after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statement that may be offered in defence, punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of the court.

(6) Subject to the approval of the Lieutenant Governor in Council, the Board shall make rules governing its practice and procedure and the exercise of its powers. Practice  
and  
procedure

(7) A registrar and such other officers and employees of the Board as are considered necessary shall be appointed under *The Public Service Act, 1961-62. New.* Registrar  
and  
employees  
1961-62,  
c. 121

**29.**—(1) At least fifteen days before the date fixed for the hearing of an application before the Board, any party to the application shall serve upon each other party a copy of any appraisal report upon which it intends to rely at the hearing. *New.* Service of  
appraisal  
reports

(2) Where it is intended by a party to adduce evidence to compensation by persons entitled by law or custom to give Expert  
evidence  
as to  
compen-  
sation

opinion evidence, not more than three such persons may be called by either party without the leave of the Board. *New.*

Duties of Board

**30.**—(1) The Board shall determine any compensation in respect of which a notice of arbitration has been served upon it under section 26 or 27, and, in the absence of agreement determine any other matter required by this or any other Act, to be determined by the Board.

Record

(2) All oral evidence submitted before the Board shall be taken down in writing and, together with such documentary evidence and things as are received in evidence by the Board, form the record.

Reasons

(3) The Board shall prepare and furnish the parties to an application with written reasons for its decision.

Reports

(4) The Board may prepare and periodically publish a summary of such of its decisions and the reasons therefor, as the Board considers to be of general public significance. *New.*

Stated case

**31.**—(1) Where the jurisdiction of the Board or the validity of any decision, order, direction or other act of the Board is called into question by any person affected, the Board, upon the request of such person, shall state a case in writing to the Court of Appeal setting forth the material facts and the decision of the court thereon is final and binding.

Order directing stated case

(2) If the Board refuses to state a case, any person affected may apply to the Court of Appeal for an order directing the Board to state a case.

Proceedings stayed until case determined

(3) Pending the decision of the stated case, no further proceedings in respect of the application shall be taken by the Board.

Appeals

**32.**—(1) An appeal lies to the Court of Appeal from any determination or order of the Board.

Idem

(2) The practice and procedure as to the appeal and proceedings incidental thereto are the same *mutatis mutandis* as upon an appeal from the High Court, except that the appeal may be taken at any time within six weeks from the day the determination or order was served on the parties, and the period of any vacation of the Supreme Court shall not be reckoned in computing such six weeks.

Powers of Court of Appeal

(3) An appeal under subsection 1 may be made on questions of law or fact or both and the Court of Appeal,

(a) may refer any matter back to the Board; or

(b) may make any decision or order that the Board has power to make,



and may exercise the same powers that it exercises on an appeal from a judge of the High Court sitting without a jury.

(4) A judge of the Court of Appeal may extend the time <sup>Extension of time</sup> for appeal for such period as he considers proper. 1962-63, c. 43, s. 11, *amended* for appeal.

**33.**—(1) Where the amount to which an owner is entitled <sup>Costs</sup> upon an expropriation is determined by the Board and the amount awarded by the Board is 85 per cent, or more, of the amount offered by the statutory authority, the Board shall make an order directing the statutory authority to pay the reasonable legal, appraisal and other costs actually incurred by the owner for the purposes of determining the compensation payable.

(2) Where the amount to which an owner is entitled upon an <sup>Idem</sup> expropriation is determined by the Board and the amount awarded by the Board is less than 85 per cent of the amount offered by the statutory authority, the Board may make such order for the payment of costs on a party and party basis as it considers appropriate. 1962-63, c. 43, s. 13, *amended*.

**34.**—(1) Subject to subsection 4 of section 25, the owner of <sup>Interest</sup> lands expropriated is entitled to be paid interest on the portion of the market value of his interest in the land and on the portion of any allowance for injurious affection to which he is entitled, outstanding from time to time, at the rate of 6 per cent a year calculated from the date the owner ceases to reside on or make productive use of the lands.

(2) Subject to subsection 3, where the Board is of the <sup>Variation of interest</sup> opinion that any delay in determining the compensation is attributable in whole or in part to the owner, it may refuse to allow him interest for the whole or any part of the time for which he might otherwise be entitled to interest, or may allow interest at such rate less than 6 per cent a year as appears reasonable.

(3) The interest to which an owner is entitled under sub-<sup>Idem</sup> section 1 shall not be reduced for the reason only that the owner did not accept the offer made by the expropriating authority, notwithstanding that the compensation as finally determined is less than the offer.

(4) Where the Board is of the opinion that any delay in <sup>Idem</sup> determining compensation is attributable in whole or in part to the expropriating authority, the Board may order the expropriating authority to pay to the owner interest under subsection 1 at a rate exceeding 6 per cent a year but not exceeding 12 per cent a year. 1962-63, c. 43, s. 14, *amended*.

Abatement  
of rent

**35.**—(1) Subject to subsection 2, where only part of the interest of a lessee is expropriated, the lessee's obligation to pay rent under the lease shall be abated *pro tanto*, as determined by the Board.

Frustration  
of lease

(2) Where all the interest of a lessee in land is expropriated or where part of the lessee's interest is expropriated and the expropriation renders the remaining part of the lessee's interest unfit for the purposes of the lease, as determined by the Board, the lease shall be deemed to be frustrated from the date of the expropriation. *New.*

Character  
of compensation

**36.** Where land has been expropriated, the compensation stands in the stead of the land, and any claim to or encumbrance on the land is, as respects the expropriating authority, converted into a claim to or upon the compensation and no longer affects the land. 1962-63, c. 43, s. 15 (1).

Payment  
of compensation not  
exceeding  
\$1,000

**37.** Where the owner who is entitled to convey the land that has been expropriated or injuriously affected and the statutory authority agree as to the compensation or the compensation has been determined and in either case it does not exceed \$1,000, the statutory authority may pay the compensation to the owner who is entitled to convey the land, saving always the rights of any other person to the compensation as against the person receiving it, and such payment discharges the statutory authority from all liability in respect of the compensation. 1962-63, c. 43, s. 15 (2).

Representative

**38.** Where an owner of the land is unknown, is under a disability or for any other reason is not represented, a judge of the Supreme Court may, after due notice to the persons interested, appoint a person to represent such owner for any of the purposes of this Act, and any action of a person so appointed is binding on the person whom he represents. 1962-63, c. 43, s. 16.

Payment  
into court

**39.**—(1) In any case where the statutory authority deems it advisable, it may, without an order, pay the compensation agreed upon or determined into the office of the Accountant of the Supreme Court together with a sum equal to the interest thereon at the rate of 6 per cent a year for six months.

Payment  
out of  
court

(2) Upon an application for payment out of court of compensation paid into court, a judge of the Supreme Court may direct that such notice of the application be given by publication or otherwise as he deems proper and may direct the trial of an issue or make such order with respect to the payment out of court of compensation and as to costs as he deems reasonable.

(3) Where an order is obtained under subsection 2 in less than six months after the payment of the compensation into court, the judge making the order may direct that a proportionate part of the interest be returned to the statutory authority. <sup>Adjustment of interest</sup>

(4) Where unborn issue or an unascertained person or class is interested in compensation paid into court, a judge of the Supreme Court may appoint such person as he deems proper to represent them, and any order made under this section is binding on them. 1962-63, c. 43, s. 17. <sup>Where unborn issue interested</sup>

**40.**—(1) Where land that has been expropriated is vested in an expropriating authority and the expropriating authority has served the registered owner with a notice that it requires possession of the land on the date specified therein, the expropriating authority, subject to any agreement to the contrary and if no application is made under subsection 3, shall take possession of the land on the date specified in the notice. <sup>Possession of expropriated land</sup>

(2) Subject to subsection 3, the date for possession shall be at least three months after the date of the serving of the notice of possession. <sup>Date for possession</sup>

(3) A registered owner or an expropriating authority may, upon such notice as the judge directs, apply to a judge for an adjustment of the date for possession specified in the notice of possession, and the judge, if he considers that under all the circumstances the application should be granted, may order that the date for possession shall be on such earlier or later date as is specified in the order. 1962-63, c. 43, s. 19, *amended*. <sup>Application for postponement of possession</sup>

**41.**—(1) Where resistance or opposition is made to the expropriating authority or any person authorized by it in entering upon, using or taking possession of land when it is entitled so to do, it may apply to a judge for a warrant directing the sheriff to put down the resistance or opposition. <sup>Warrant to put down resistance to entry, etc.</sup>

(2) The judge shall, in writing, appoint a time and place for the hearing of the application and in his appointment may direct that it shall be served upon such person as he prescribes. <sup>Hearing</sup>

(3) On proof of the resistance or opposition, the judge may issue a warrant. <sup>Issue of warrant</sup>

(4) The sheriff shall forthwith execute the warrant and make a return to the judge of the execution thereof. 1962-63, c. 43, s. 20, *amended*. <sup>Return</sup>



Abandonment of expropriated land

**42.**—(1) Where, at any time before the compensation upon an expropriation is paid in full, the land or any part thereof is found to be unnecessary for the purposes of the expropriating authority or if it is found that a more limited estate or interest therein only is required, the expropriating authority shall so notify each owner of the abandoned land, or estate or interest, who is served or entitled to be served with the notice of expropriation, who may, by election in writing,

- (a) take the land, estate or interest back, in which case he has the right to compensation for consequential damages; or
- (b) require the expropriating authority to retain the land, estate or interest, in which case he has the right to full compensation therefor. *New.*

Revesting

(2) Where all the owners elect to take the land, estate or interest back under clause *a* of subsection 1, the expropriating authority may, by an instrument signed by it and registered in the proper registry or land titles office and served on each owner, declare that the land or part thereof is not required and is abandoned by the expropriating authority or that it is intended to retain only such limited estate or interest as is mentioned in the instrument, and thereupon,

- (a) the land declared to be abandoned reverts in the owner from whom it was expropriated and those entitled to claim under him; or
- (b) in the event of a limited estate or interest only being retained by the expropriating authority, the land so reverts subject to such limited estate or interest. 1962-63, c. 43, s. 21 (1), *amended.*

Disposal of expropriated lands

**43.** Where lands that have been expropriated and are in the possession of the expropriating authority, are found by the expropriating authority to be no longer required for its purposes, the expropriating authority shall not, without the approval of the approving authority, dispose of the lands without giving the owners from whom the land was taken the first chance to repurchase the lands on the terms of the best offer received by the expropriating authority. *New.*

Time for application

**44.** Any application to set aside or quash any proceeding or step taken under this Act shall be made within thirty days after the proceeding or step in respect of which the application is made, but this section does not apply where the applicant was entitled to and not given notice of the proceeding or step or where the proceeding or step was a nullity. *New.*

**45.** The Lieutenant Governor in Council may make Regulations regulations,

- (a) prescribing rates of interest for the purposes of section 20;
- (b) prescribing forms for the purposes of this Act and providing for their use;
- (c) prescribing procedures respecting applications to and hearings by inquiry officers and boards of negotiation. *New.*

**46.**—(1) This Act applies in respect of expropriations for which a plan has not been registered under section 4 of *The Expropriation Procedures Act, 1962-63* before this Act comes into force, and an expropriation for which a plan has been registered under section 4 of the said Act before this Act comes into force shall be continued in accordance with *The Expropriation Procedures Act, 1962-63*, except that where the compensation has not been agreed upon between the parties and no evidence has been heard by a tribunal under *The Expropriation Procedures Act, 1962-63*, other than the board of negotiation, sections 13 to 21, 23, 24, 29, 33, 34, 35 and 42 apply thereto. Application to existing proceedings R.S.O. 1960, c. 43

(2) Until section 28 is proclaimed in force, the Ontario Municipal Board shall be deemed to be the Land Compensation Board. *New.* O.M.B. to be interim Land Compensation Board

**47.** *The Expropriation Procedures Act, 1962-63, The Expropriation Procedures Amendment Act, 1965 and The Expropriation Procedures Amendment Act, 1966* are repealed. 1962-63, c. 43; 1965, c. 38; 1966, c. 53, repealed

**48.**—(1) This Act, except section 28, comes into force on the day it receives Royal Assent. Commencement

(2) Section 28 comes into force on a day to be named by the Lieutenant Governor by his proclamation. Idem

**49.** This Act may be cited as *The Expropriations Act, 1968-69*. Short title







The Expropriations Act, 1968-69

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*1st Reading*

November 25th, 1968

*2nd Reading*

December 4th, 1968

*3rd Reading*

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MR. WISHART

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*(Reprinted as amended by the Committee  
of the Whole House)*

**BILL 5**

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

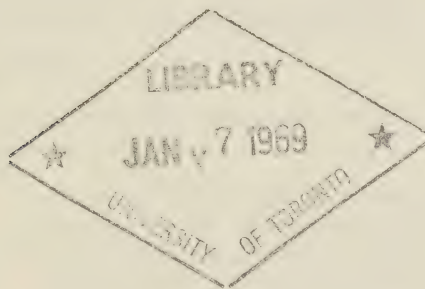
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**The Expropriations Act, 1968-69**

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MR. WISHART

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BILL 5

1968-69

## The Expropriations Act, 1968-69

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

### 1.—(1) In this Act,

Interpre-  
tation

(a) “approving authority” means the approving authority as determined under section 5;

(b) “Board” means the Land Compensation Board established under section 28;

(c) “expropriate” means the taking of land without the consent of the owner by an expropriating authority in the exercise of its statutory powers, but does not include the taking of land for the widening of a highway where entry is deferred under section 338 of *The Municipal Act*;

R.S.O. 1960,  
c. 249

(d) “expropriating authority” means the Crown or any person empowered by statute to expropriate land;

(e) “injurious affection” means,

(i) where a statutory authority acquires part of the land of an owner,

a. the reduction in market value thereby caused to the remaining land of the owner by the acquisition or by the construction of the works thereon or by the use of the works thereon or any combination of them, and

b. such personal and business damages, resulting from the construction or use, or both, of the works as the statutory authority would be liable for if the construction or use were not under the authority of a statute,



(ii) where the statutory authority does not acquire part of the land of an owner,

a. such reduction in the market value of the land of the owner, and

b. such personal and business damages,

resulting from the construction and not the use of the works by the statutory authority, as the statutory authority would be liable for if the construction were not under the authority of a statute,

and for the purposes of this clause, part of the lands of an owner shall be deemed to have been acquired where the owner from whom lands are acquired retains lands contiguous to those acquired or retains lands of which the use is enhanced by unified ownership with those acquired;

- (f) “judge”, except where otherwise described, means a judge of the county or district court of the county or district in which the land or the greater part of it is situate;
- (g) “land” includes any estate, term, easement, right or interest in, to, over or affecting land;
- (h) “owner” includes a mortgagee, tenant, execution creditor, a person entitled to a limited estate or interest in land, a committee of the estate of a mentally incompetent person or of a person incapable of managing his affairs, and a guardian, executor, administrator or trustee in whom land is vested;
- (i) “prescribed” means prescribed by the regulations made under this Act;
- (j) “purchase-money mortgage” means a mortgage given by a purchaser of land to the vendor of the land or his nominee as security for the payment of all or part of the consideration for the sale;
- (k) “registered owner” means an owner of land whose interest in the land is defined and whose name is specified in an instrument in the proper registry, land titles or sheriff’s office, and includes a person shown as a tenant of land on the last revised assessment roll;

- (l) "security holder" means a person who has an interest in land as security for the payment of money;
- (m) "statutory authority" means the Crown or any person empowered by statute to expropriate land or cause injurious affection.
- (n) "tenant" includes a lessee or occupant occupying premises under any tenancy whether written, oral or implied. 1962-63, c. 43, s. 1, *amended*.

(2) Any document required by this Act to be served may be <sup>Service</sup> served personally or by registered mail addressed to the person to be served at his last-known address, or if that person or his address is unknown, by publication once a week for three weeks in a newspaper having general circulation in the locality in which the land concerned is situate and service shall be deemed to be made,

- (a) in the case of service by registered mail, on the second day after the day of mailing; and
- (b) in the case of service by publication, on the date of the third publication. *New*.

**2—**(1) Notwithstanding any general or special Act, where <sup>Application of Act</sup> land is expropriated or injurious affection is caused by a statutory authority, this Act applies. 1962-63, c. 43, s. 2 (1), *amended*.

(2) The provisions of any general or special Act providing <sup>References in other Acts to R.S.O. 1960, c. 249, 338, deemed references to this Act</sup> procedures with respect to the expropriation of land or the compensation payable for land expropriated or for injurious affection that refer to *The Municipal Act*, *The Public Works Act* or any other Act shall be deemed to refer to this Act and not to *The Municipal Act*, *The Public Works Act* or other Act, as the case may be. 1962-63, c. 43, s. 2 (5).

(3) This Act does not apply to the use of or injury to land <sup>Application to 1962-63, c. 39</sup> authorized under *The Drainage Act*, 1962-63 for the purposes of a drainage works constructed under that Act or to any proceedings in connection therewith. 1965, c. 38, s. 1.

(4) Where there is conflict between a provision of this Act <sup>Conflict</sup> and a provision of any other general or special Act, the provision of this Act prevails. 1962-63, c. 43, s. 2 (4).

**3.** This Act binds the Crown. 1962-63, c. 43, s. 3.

<sup>Crown bound by Act</sup>

**4.—**(1) An expropriating authority shall not expropriate <sup>Approval of intention to expropriate</sup> land without the approval of the approving authority as determined under section 5.

Gas storage  
areas  
excepted  
1964, c. 74

(2) Subsection 1 does not apply to an authorization of the Ontario Energy Board under *The Ontario Energy Board Act, 1964* in respect of storage of gas in a gas storage area or to an expropriation authorized under section 40 of that Act. *New.*

Approving  
authority

5.—(1) Subject to subsections 3, 4 and 5, the approving authority in respect of an expropriation shall be the Minister responsible for the administration of the Act in which the power to expropriate is granted, except that,

- (a) where a municipality or a local board thereof, other than an elected school board, expropriates lands for municipal purposes, the approving authority shall be the council of the municipality; and
- (b) where an elected school board expropriates lands, the approving authority shall be the school board.

Idem,  
private  
Acts

(2) Where the power to expropriate is granted in a private Act, the approving authority shall be,

- (a) in the case of universities or other educational institutions, the Minister of University Affairs;
- (b) in the case of hospitals or other medical or health institutions, the Minister of Health; and
- (c) in the case of all other corporations, the Provincial Secretary and Minister of Citizenship.

Idem,  
public  
works  
R.S.O. 1960,  
c. 338

(3) Where an expropriation is made under *The Public Works Act* for the benefit of a department or agency of the Ontario Government, the approving authority shall be the Minister for the department or responsible for the agency for the benefit of which the land is expropriated.

Idem,  
Power  
Commission  
R.S.O. 1960,  
c. 300

(4) Where an expropriation is made under *The Power Commission Act*, the approving authority shall be the Minister of Energy and Resources Management.

Idem,  
other cases

(5) The approving authority in any case not provided for in this section shall be the Minister of Justice and Attorney General. *New.*

Notice of  
intention  
to expro-  
pate

6.—(1) Upon applying for an approval under section 4, an expropriating authority shall serve a notice of its application for approval to expropriate upon each registered owner of the lands to be expropriated and shall publish the notice once a week for three consecutive weeks in a newspaper having general circulation in the locality in which the lands are situate.

(2) Any owner of lands in respect of which notice is given <sup>Notification for hearing</sup> under subsection 1 who desires a hearing, shall so notify the approving authority in writing,

- (a) in the case of a registered owner, served personally or by registered mail within thirty days after he is served with the notice, or, when he is served by publication, within thirty days after the first publication of the notice;
- (b) in the case of an owner who is not a registered owner, within thirty days after the first publication of the notice.

(3) The Lieutenant Governor in Council may, in special <sup>Order dispensing with inquiry</sup> circumstances where he deems it necessary or expedient in the public interest to do so, direct that an intended expropriation shall proceed without the inquiry procedure and thereupon subsections 1 and 2 of this section, section 7 and subsections 1 and 2 of section 8 do not apply thereto.

(4) Where an order is made under subsection 3, the expropriating authority shall forthwith serve a copy of the order on each registered owner affected by the intended expropriation. <sup>Service of order</sup>

(5) The Minister of Justice and Attorney General shall, <sup>Report to assembly</sup> within thirty days after the commencement of each session of the Legislative Assembly, lay before the Assembly a copy of each order made theretofore under subsection 3 and not previously laid before the Assembly. *New.*

**7.—**(1) The Minister of Justice and Attorney General <sup>Appointment of inquiry officers</sup> shall appoint a chief inquiry officer and such inquiry officers as he considers necessary.

(2) The chief inquiry officer shall have general supervision <sup>Duties of chief inquiry officer</sup> and direction over inquiry officers and the assignment of their duties.

(3) Where a notification is made under subsection 2 of <sup>Hearing</sup> section 6, the approving authority shall refer the matter to the chief inquiry officer who shall forthwith assign an inquiry officer who shall fix a time and place for a hearing and who shall cause notice of the hearing to be served on each party to the inquiry.

(4) At least five days before the date fixed for the hearing, <sup>Notice of grounds</sup> the expropriating authority shall serve upon each party to the inquiry a notice indicating the grounds upon which it intends to rely at the hearing and shall make available for inspection by the parties any documents, including maps and plans, that the expropriating authority intends to use at the hearing.



- Inquiry** (5) The hearing shall be by means of an inquiry conducted by the inquiry officer who shall inquire into whether the taking of the lands or any part of the lands of an owner or of more than one owner of the same lands is fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority.
- Report** (6) The inquiry officer shall report to the approving authority a summary of the evidence and arguments advanced by the parties, the inquiry officer's findings of fact, and his opinion on the merits of the application for approval with his reasons therefor.
- Combined inquiries** (7) The inquiry officer may combine two or more related inquiries and conduct them in all respects and for all purposes as one inquiry.
- Parties** (8) The expropriating authority, each owner who notifies the approving authority that he desires a hearing in respect of the lands intended to be expropriated and any owner added as a party by the inquiry officer are parties to the inquiry.
- Powers and duties of inquiry officer** (9) The inquiry officer,
- (a) may add any owner whose land would be affected by the expropriation of the lands concerned in the inquiry or any modification thereof as a party to the inquiry;
  - (b) shall give every party to the inquiry an opportunity to present evidence and argument and to examine and cross-examine witnesses, either personally or by his counsel or agent;
  - (c) is not bound by the technical or legal rules of evidence; and
  - (d) may inspect the lands concerned either alone or in the presence of the parties.
- Costs** (10) The inquiry officer may recommend to the approving authority that a party to the inquiry be paid a fixed amount for his costs of the inquiry not to exceed \$200 and the approving authority may in its discretion order the expropriating authority to pay such costs forthwith. *New.*
- Powers and duties of approving authority** **8.—**(1) The approving authority shall consider the report of the inquiry officer and shall approve or not approve the proposed expropriation or approve the proposed expropri-

ation with such modifications as the approving authority considers proper, but an approval with modifications shall not affect the lands of a registered owner who is not or has not been made a party to the hearing.

(2) The approving authority shall give written reasons for its decision and shall cause its decision and the reasons therefor to be served upon all the parties within 90 days after the date upon which the report of the inquiry officer is received by the approving authority. <sup>Reasons</sup>

(3) The approving authority shall certify its approval in the prescribed form. <sup>Certificate</sup> *New.*

9.—(1) Where a proposed expropriation has been approved under this Act or under *The Ontario Energy Board Act, 1964*, the expropriating authority shall register, within three months after the granting of the approval in the proper registry or land titles office a plan of the land signed by the expropriating authority and by an Ontario land surveyor, and thereupon, but not otherwise, the land vests in the expropriating authority. <sup>Registration of plan 1964, c. 74</sup>

(2) Where the land is required for a limited time only or only a limited estate, right or interest therein is required, the plan registered under this section shall indicate by appropriate words thereon that the land is taken for such limited time only or that only such limited estate, right or interest therein is taken, and, by the registration in such case, the land for such limited time or such limited estate, right or interest therein vests in the expropriating authority. <sup>Where land required temporarily, etc.</sup>

(3) In the case of an omission, misstatement or erroneous description in a plan registered under this section, the expropriating authority may register in the proper registry or land titles office a plan replacing or amending the original plan and signed by the expropriating authority and by an Ontario land surveyor, and a plan registered under this subsection shall be marked to show the nature of the replacement or amendment and is of the same force and effect as, and is in substitution for, the original plan to the extent that such plan is replaced or amended thereby. <sup>Correction of errors</sup>

(4) Where a plan purports to have been signed by an expropriating authority under this section, it shall be presumed to have been signed by the expropriating authority without proof of the signature or official character of the person appearing to have signed it, unless otherwise directed by a court or the Board. <sup>Presumption as to signing</sup>



Ontario  
Hydro  
R.S.O. 1960,  
c. 300

(5) Where a limited estate, right or interest in land is being taken under *The Power Commission Act* for an electrical transmission or distribution line carried on single poles, The Hydro-Electric Power Commission of Ontario may, before registering a plan under subsection 1, register in the proper registry or land titles office a preliminary plan, to be known as and marked "Preliminary Plan" and being a plan with or without local description, signed by the secretary of the Commission and illustrating the location of the proposed line and indicating by appropriate words thereon the nature of the estate, right or interest being taken, and such preliminary plan when registered has the same force and effect as a plan registered under subsection 1, but a plan in accordance with subsection 1 shall be registered within two years after the registration of the preliminary plan in substitution for the preliminary plan. 1962-63, c. 43, s. 4, *amended*.

Notice of  
expro-  
priation

**10.**—(1) Where a plan has been registered under section 9 and no agreement as to compensation has been made with the owner, the expropriating authority may serve the owner, and shall serve the registered owner, within thirty days after the date of registration of the plan, with a notice of expropriation of his land, in the prescribed form, but failure to serve the notice does not invalidate the expropriation.

Election of  
date for  
compen-  
sation

(2) Where a plan has been registered under section 9, the registered owner may elect, by notice in writing served upon the expropriating authority, within thirty days after the owner was served with the notice under subsection 1, to have the compensation to which he is entitled assessed,

- (a) where there has been an inquiry, as of the date the notice of hearing before the inquiry officer was served;
- (b) as of the date of the registration of the plan; or
- (c) as of the date on which he was served with the notice of expropriation.

and, where the election is not made within the prescribed time, the owner shall be deemed to have elected to have the compensation assessed as of the date of the registration of the plan. 1962-63, c. 43, s. 5, *amended*.

Entry on  
land for  
appraisal

(3) An expropriating authority may, after it has served notice of expropriation on the owner in possession of the lands expropriated, and with the consent of the said owner, enter on the expropriated lands for the purposes of viewing for appraisal, but, where the consent of the owner is not given,

the expropriating authority may apply to the Board which may, by order, authorize the entry upon such terms and conditions as are specified in the order. *New.*

**11.** Where land is expropriated or is injuriously affected by a statutory authority, the statutory authority may, before the compensation is agreed upon or determined, undertake to make alterations or additions or to construct additional work or to grant other lands, in which case the compensation shall be determined having regard to such undertaking, and, if the undertaking has not already been carried out, the Board may declare that, in addition to the compensation determined, if any, the owner is entitled to have such alteration or addition made or such additional work constructed or such grant made to him. 1962-63, c. 43, s. 6 (2), *amended*. <sup>Reparation</sup>

**12.** Section 21 of *The Ontario Energy Board Act, 1964* applies in respect of the use of designated gas storage areas. 1964, c. 74 1965, c. 38, s. 2, *part, amended*. <sup>Gas storage areas</sup>

**13.**—(1) Where land is expropriated, the expropriating authority shall pay the owner such compensation as is determined in accordance with this Act. 1962-63, c. 43, s. 6 (1), *amended*. <sup>Compensation</sup>

(2) Where the land of an owner is expropriated, the compensation payable to the owner shall be based upon, <sup>Idem</sup>

- (a) the market value of the land;
- (b) the damages attributable to disturbance;
- (c) damages for injurious affection; and
- (d) any special difficulties in relocation,

but, where the market value is based upon a use of the land other than the existing use, no compensation shall be paid under clause *b* for damages attributable to disturbance that would have been incurred by the owner in using the land for such other use. *New.*

**14.**—(1) The market value of land expropriated is the amount that the land might be expected to realize if sold in the open market by a willing seller to a willing buyer. <sup>Market value</sup>

(2) Where the land expropriated is devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, and the owner intends in good faith to relocate in similar premises, the market value shall be deemed to be the reasonable cost of equivalent re-instatement. <sup>Idem</sup>

Idem

(3) Where only part of the land of an owner is taken and such part is of a size, shape or nature for which there is no general demand or market, the market value and the injurious affection caused by the taking may be determined by determining the market value of the whole of the owner's land and deducting therefrom the market value of the owner's land after the taking.

Idem

(4) In determining the market value of land, no account shall be taken of,

- (a) the special use to which the expropriating authority will put the land;
- (b) any increase or decrease in the value of the land resulting from the imminence of the development in respect of which the expropriation is made or from any imminent prospect of expropriation;
- (c) any increase in the value of the land resulting from the land being put to a use that could be restrained by any court or is contrary to law or is detrimental to the health of the occupants of the land or to the public health. *New.*

Increase  
by Board

**15.** Upon application therefor, the Board shall, by order, after fixing the market value of lands used for residential purposes of the owner under subsection 1 of section 14, award such additional amount of compensation as, in the opinion of the Board, is necessary to enable the owner to relocate his residence in accommodation that is at least equivalent to the accommodation expropriated. *New.*

Separate  
interests

**16.** Where there are more separate interests than one in land, other than the interest of a security holder or a vendor under an agreement for sale, the market value of each such separate interest shall be valued separately. *New.*

Interpre-  
tation

**17.—(1)** In this section, "bonus" means the amount by which the amount secured under a mortgage exceeds the amount actually advanced.

Security  
holders

(2) Where land is subject to a security interest,

- (a) the value of the interest of the security holder shall be determined in accordance with this section and section 20 and not otherwise; and
- (b) the market value of the land shall be determined without regard to the interest of the security holder and the amount of such market value plus any damages for injurious affection shall stand in place of the land for the purposes of the security.

(3) Security holders shall be paid the amount of principal and interest outstanding against the security out of the market value of the land and any damages for injurious affection payable in respect of the land subject to the security, in accordance with their priorities, whether or not such principal and interest is due and subject to subsections 4 and 5. <sup>Payment out of market value</sup>

(4) Where the land is subject to a mortgage and the amount payable to the mortgagee under subsection 3 is insufficient to satisfy the mortgage in full, <sup>Bonus</sup>

- (a) where the mortgage is a purchase-money mortgage, the mortgage shall be deemed to be fully paid, satisfied and discharged for all purposes; and
- (b) where the mortgage is not a purchase-money mortgage and includes a bonus,
  - (i) the amount by which the amount payable to the mortgagee under subsection 3 is insufficient to pay the amount remaining unpaid under the mortgage; or
  - (ii) the amount of the bonus,

whichever is the lesser, shall be deemed to be fully paid and satisfied for all purposes.

(5) No amount shall be paid in respect of a bonus until all security holders have been paid all amounts payable other than any bonus. <sup>Idem</sup>

(6) Where land held as security is expropriated in part or is injuriously affected a security holder is entitled to be paid to the extent possible in accordance with his priority, out of the market value portion of the compensation and any damages for injurious affection therefor, as the case may be, a sum that is in the same ratio to such portion of the compensation and damages as the balance outstanding on the security at the date of the expropriation or injurious affection is to the market value of the entire land, provided however, that the sum so determined shall be reduced by the amount of any payments made to the security holder by the owner after the date of expropriation or injurious affection. *New.* <sup>Idem</sup>

**18.—**(1) The expropriating authority shall pay to an owner other than a tenant, in respect of disturbance, such reasonable costs as are the natural and reasonable consequences of the expropriation, including, <sup>Allowance for disturbance: owner other than tenant</sup>

- (a) where the premises taken include the owner's residence,



- (i) an allowance to compensate for inconvenience and the cost of finding another residence of 5 per cent of the compensation payable in respect of the market value of that part of the land expropriated that is used by the owner for residential purposes, provided that such part was not being offered for sale on the date of the expropriation, and
- (ii) an allowance for improvements the value of which is not reflected in the market value of the land;
- (b) where the premises taken do not include the owner's residence, the owner's costs of finding premises to replace those expropriated, provided that the lands were not being offered for sale on the date of expropriation; and
- (c) relocation costs, including,
  - (i) the moving costs, and
  - (ii) the legal and survey costs and other non-recoverable expenditures incurred in acquiring other premises.

**Tenant**

(2) The expropriating authority shall pay to a tenant occupying expropriated land in respect of disturbance so much of the cost referred to in subsection 1 as is appropriate having regard to,

- (a) the length of the term;
  - (b) the portion of the term remaining;
  - (c) any rights to renew the tenancy or the reasonable prospects of renewal;
  - (d) in the case of a business, the nature of the business; and
  - (e) the extent of the tenant's investment in the land.
- New.*

**Business loss**

**19.**—(1) Where a business is located on the land expropriated, the expropriating authority shall pay compensation for business loss resulting from the relocation of the business made necessary by the expropriation and, unless the owner and the expropriating authority otherwise agree, the business



losses shall not be determined until the business has moved and been in operation for six months or until a three-year period has elapsed, whichever occurs first.

(2) The Board may, in determining compensation on the application of the expropriating authority, or an owner, include an amount not exceeding the value of the good will of a business where the land is valued on the basis of its existing use and, in the opinion of the Board, it is not feasible for the owner to relocate. *New.*

**20.** Where a statutory authority prepays a mortgage in whole or in part, the statutory authority,

(a) shall pay to the mortgagee a bonus in respect of the prepayment amounting to,

(i) three months interest on the amount of principal prepaid at the rate of 6 per cent a year or at such other rate as is prescribed by the Lieutenant Governor in Council by regulation, or

(ii) the value of any notice or bonus for prepayment provided for in the mortgage,

whichever is the lesser;

(b) shall pay to the mortgagee where,

(i) the prevailing interest rate for an equivalent investment is lower than the rate under the mortgage, and

(ii) there is no provision in the mortgage permitting prepayment at the date of the expropriation,

an amount to compensate for the difference in the interest rates for the period for which the amount of principal prepaid has been advanced, not to exceed five years; and

(c) shall pay to the mortgagor whose interest is expropriated an amount to compensate for any loss incurred by reason of a difference in the interest rates during the period for which the payment of principal provided for in the mortgage has been advanced, but such difference shall not be calculated on a new interest rate any greater than the prevailing interest rate for an equivalent mortgage. *New.*

Compensation for injurious affection

**21.** A statutory authority shall compensate the owner of land for loss or damage caused by injurious affection. 1962-63, c. 43, s. 6 (1), *amended*.

Claim for compensation for injurious affection

**22.—**(1) Subject to subsection 2, a claim for compensation for injurious affection shall be made by the person suffering the damage or loss in writing with particulars of the claim within one year after the damage was sustained or after it became known to him, and, if not so made, the right to compensation is forever barred.

Idem, where owner under disability

(2) Where the person who is injuriously affected is an infant, a mental incompetent or a person incapable of managing his affairs, his claim for compensation shall be made within one year after he ceased to be under the disability or, in the case of his death while under the disability, within one year after his death, and, if not so made, the right to compensation is forever barred. 1962-63, c. 43, s. 7, *amended*.

Set-off against damages

**23.** The value of any advantage to the land or remaining land of an owner derived from any work for which land was expropriated or by which land was injuriously affected shall be set-off only against the amount of the damages for injurious affection to the owner's land or remaining lands. *New*.

Agreements

**24.** A statutory authority has the authority to make and perform an agreement with an owner in respect of any claim of the owner under this Act, including any costs of the owner and notwithstanding that this Act requires the claim to be determined by the Board. *New*.

Offer

**25.—**(1) Where no agreement as to compensation has been made with the owner, the expropriating authority shall, within three months after the registration of a plan under section 9 and before taking possession of the land,

(a) serve upon the registered owner,

(i) an offer of an amount in full compensation for his interest, and

(ii) where the registered owner is not a tenant, a statement of the total compensation being offered for all interests in the land,

excepting compensation for business loss for which the determination is postponed under subsection 1 of section 19; and

(b) offer the registered owner immediate payment of 100 per cent of the amount of the market value of

the owner's land as estimated by the expropriating authority, and the payment and receipt of that sum is without prejudice to the rights conferred by this Act in respect of the determination of compensation and is subject to adjustment in accordance with any compensation that may subsequently be determined in accordance with this Act or agreed upon. 1962-63, c. 43, ss. 8 (1), 18, *amended*.

(2) The expropriating authority shall base its offer of compensation made under subsection 1 upon a report appraising the market value of the lands being taken and damages for injurious affection, and shall serve a copy of the appraisal report upon the owner at the time the offer is made. <sup>Furnishing appraisal report</sup>

(3) The expropriating authority may, within the period mentioned in subsection 1 and before taking possession of the land, upon giving at least two days notice to the registered owner, apply to the judge for an order extending any time referred to in subsection 1, and the judge may in his order authorize the statutory authority to take possession of the land before the expiration of the extended time for serving the offer or statement under clause *a* of subsection 1 upon such conditions as are specified in the order. *New*. <sup>Extension of time</sup>

(4) If any registered owner is not served with the offer required to be served on him under subsection 1 within the time limited by subsection 1 or by an order of a judge under subsection 3, or by agreement, the failure does not invalidate the expropriation but interest upon the unpaid portion of any compensation payable to such registered owner shall be calculated from the date of registration of the plan. 1962-63, c. 43, s. 8 (1-3), *amended*. <sup>Failure to serve</sup>

**26.** Where the statutory authority and the owner have not agreed upon the compensation payable under this Act and in the case of injurious affection, section 22 has been complied with, or, in the case of expropriation, section 25 has been complied with or the time for complying therewith has expired, <sup>Choice of proceedings, negotiation or arbitration</sup>

- (a) the statutory authority or the owner may serve notice of negotiation upon the other of them and upon the board of negotiation stating that it or he, as the case may be, requires the compensation to be negotiated under section 27; or
- (b) where the statutory authority and the owner have agreed to dispense with negotiation proceedings, the statutory authority or the owner may serve notice of arbitration upon the other of them and upon the

Board to have the compensation determined by arbitration. 1965, c. 38, s. 2, *part, amended*.

Board of  
negotiation

**27.**—(1) A board of negotiation shall be established consisting of two or more members appointed by the Lieutenant Governor in Council, one of whom may be designated as chairman.

Quorum

(2) Any two of the members of the board of negotiation constitute a quorum and are sufficient to perform all the functions of the board on behalf of the board.

Place of  
sitting

(3) The board of negotiation may sit at any place in Ontario.

Negotiation  
of amount  
of compen-  
sation

(4) In any case in which a notice of negotiation is served, the board of negotiation shall, upon reasonable notice to the statutory authority and the owner, meet with them and, without prejudice to any subsequent proceedings, proceed in a summary and informal manner to negotiate a settlement of the compensation.

Inspection  
of land

(5) Before or during the negotiation proceedings, the board of negotiation shall inspect the land that has been expropriated or injuriously affected.

Where no  
settlement  
reached

(6) If the negotiation proceedings do not result in a settlement of the compensation, the statutory authority or the owner may serve notice of arbitration upon the other of them, and upon the Board, stating that it or he, as the case may be, requires the compensation to be determined by arbitration as though the negotiation proceedings had not taken place. 1965, c. 38, s. 2, *part, amended*.

Land  
Compensa-  
tion Board

**28.**—(1) The Land Compensation Board is established and shall be composed of a chairman and such number of vice-chairmen and other members as the Lieutenant Governor in Council considers advisable, all of whom shall be appointed by the Lieutenant Governor in Council.

Qualifica-  
tions of  
chairman  
and vice-  
chairmen

(2) The chairman and vice-chairmen shall be members of the bar of one of the provinces of Canada.

Quorum

(3) The chairman or a vice-chairman and two other members of the Board constitute a quorum and are sufficient for the exercise of all the jurisdiction and powers of the Board, except that in matters respecting a claim for compensation not exceeding \$1,000, one member of the Board constitutes a quorum and is sufficient for the exercise of all the jurisdiction of the Board.



## (4) The Board may,

Powers  
of Board

- (a) administer oaths to witnesses and require them to give evidence under oath;
- (b) may issue summonses requiring the attendance of witnesses and the production of documents and things;
- (c) hold sittings at any place in Ontario and in more than one place at the same time.

## (5) If any person,

- (a) on being duly summoned as a witness before the Board makes default in attending; or Enforce-  
ment of  
summons
- (b) being in attendance as a witness refuses to take an oath legally required by the Board to be taken, or to produce any document or thing in his power or control legally required by the Board to be produced by him, or to answer any question to which the Board may legally require an answer; or
- (c) does any other thing that would, if the Board had been a court of law having power to commit for contempt, have been contempt of that court,

a member of the Board may certify the offence of that person under his hand to the High Court, and the court may thereupon inquire into the alleged offence and after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statement that may be offered in defence, punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of the court.

(6) Subject to the approval of the Lieutenant Governor in Council, the Board shall make rules governing its practice and procedure and the exercise of its powers. Practice  
and  
procedure

(7) A registrar and such other officers and employees of the Board as are considered necessary shall be appointed under *The Public Service Act, 1961-62. New.* Registrar  
and  
employees  
1961-62,  
c. 121

**29.**—(1) At least fifteen days before the date fixed for the hearing of an application before the Board, any party to the application shall serve upon each other party a copy of any appraisal report upon which it intends to rely at the hearing. *New.* Service of  
appraisal  
reports

(2) Where it is intended by a party to adduce evidence as to compensation by persons entitled by law or custom to give Expert  
evidence  
as to  
compen-  
sation



opinion evidence, not more than three such persons may be called by either party without the leave of the Board. *New.*

Duties of  
Board

**30.**—(1) The Board shall determine any compensation in respect of which a notice of arbitration has been served upon it under section 26 or 27, and, in the absence of agreement determine any other matter required by this or any other Act, to be determined by the Board.

Record

(2) All oral evidence submitted before the Board shall be taken down in writing and, together with such documentary evidence and things as are received in evidence by the Board, form the record.

Reasons

(3) The Board shall prepare and furnish the parties to an application with written reasons for its decision.

Reports

(4) The Board may prepare and periodically publish a summary of such of its decisions and the reasons therefor, as the Board considers to be of general public significance. *New.*

Stated  
case

**31.**—(1) Where the jurisdiction of the Board or the validity of any decision, order, direction or other act of the Board is called into question by any person affected, the Board, upon the request of such person, shall state a case in writing to the Court of Appeal setting forth the material facts and the decision of the court thereon is final and binding.

Order  
directing  
stated case

(2) If the Board refuses to state a case, any person affected may apply to the Court of Appeal for an order directing the Board to state a case.

Proceedings  
stayed  
until case  
determined

(3) Pending the decision of the stated case, no further proceedings in respect of the application shall be taken by the Board. *New.*

Appeals

**32.**—(1) An appeal lies to the Court of Appeal from any determination or order of the Board.

Idem

(2) The practice and procedure as to the appeal and proceedings incidental thereto are the same *mutatis mutandis* as upon an appeal from the High Court, except that the appeal may be taken at any time within six weeks from the day the determination or order was served on the parties, and the period of any vacation of the Supreme Court shall not be reckoned in computing such six weeks.

Powers of  
Court of  
Appeal

(3) An appeal under subsection 1 may be made on questions of law or fact or both and the Court of Appeal,

(a) may refer any matter back to the Board; or

(b) may make any decision or order that the Board has power to make,

and may exercise the same powers that it exercises on an appeal from a judge of the High Court sitting without a jury.

(4) A judge of the Court of Appeal may extend the time <sup>Extension of time</sup> for appeal for such period as he considers proper. 1962-63, c. 43, s. 11, *amended*.

**33.**—(1) Where the amount to which an owner is entitled <sup>Costs</sup> upon an expropriation is determined by the Board and the amount awarded by the Board is 85 per cent, or more, of the amount offered by the statutory authority, the Board shall make an order directing the statutory authority to pay the reasonable legal, appraisal and other costs actually incurred by the owner for the purposes of determining the compensation payable.

(2) Where the amount to which an owner is entitled upon an <sup>Idem</sup> expropriation is determined by the Board and the amount awarded by the Board is less than 85 per cent of the amount offered by the statutory authority, the Board may make such order for the payment of costs on a party and party basis as it considers appropriate. 1962-63, c. 43, s. 13, *amended*.

**34.**—(1) Subject to subsection 4 of section 25, the owner of <sup>Interest</sup> lands expropriated is entitled to be paid interest on the portion of the market value of his interest in the land and on the portion of any allowance for injurious affection to which he is entitled, outstanding from time to time, at the rate of 6 per cent a year calculated from the date the owner ceases to reside on or make productive use of the lands.

(2) Subject to subsection 3, where the Board is of the <sup>Variation of interest</sup> opinion that any delay in determining the compensation is attributable in whole or in part to the owner, it may refuse to allow him interest for the whole or any part of the time for which he might otherwise be entitled to interest, or may allow interest at such rate less than 6 per cent a year as appears reasonable.

(3) The interest to which an owner is entitled under sub-<sup>Idem</sup>section 1 shall not be reduced for the reason only that the owner did not accept the offer made by the expropriating authority, notwithstanding that the compensation as finally determined is less than the offer.

(4) Where the Board is of the opinion that any delay in <sup>Idem</sup>determining compensation is attributable in whole or in part to the expropriating authority, the Board may order the expropriating authority to pay to the owner interest under subsection 1 at a rate exceeding 6 per cent a year but not exceeding 12 per cent a year. 1962-63, c. 43, s. 14, *amended*.

Abatement  
of rent

**35.**—(1) Subject to subsection 2, where only part of the interest of a lessee is expropriated, the lessee's obligation to pay rent under the lease shall be abated *pro tanto*, as determined by the Board.

Frustration  
of lease

(2) Where all the interest of a lessee in land is expropriated or where part of the lessee's interest is expropriated and the expropriation renders the remaining part of the lessee's interest unfit for the purposes of the lease, as determined by the Board, the lease shall be deemed to be frustrated from the date of the expropriation. *New.*

Character  
of compensation

**36.** Where land has been expropriated, the compensation stands in the stead of the land, and any claim to or encumbrance on the land is, as respects the expropriating authority, converted into a claim to or upon the compensation and no longer affects the land. 1962-63, c. 43, s. 15 (1).

Payment  
of compensation  
not exceeding  
\$1,000

**37.** Where the owner who is entitled to convey the land that has been expropriated or injuriously affected and the statutory authority agree as to the compensation or the compensation has been determined and in either case it does not exceed \$1,000, the statutory authority may pay the compensation to the owner who is entitled to convey the land, saving always the rights of any other person to the compensation as against the person receiving it, and such payment discharges the statutory authority from all liability in respect of the compensation. 1962-63, c. 43, s. 15 (2).

Representative

**38.** Where an owner of the land is unknown, is under a disability or for any other reason is not represented, a judge of the Supreme Court may, after due notice to the persons interested, appoint a person to represent such owner for any of the purposes of this Act, and any action of a person so appointed is binding on the person whom he represents. 1962-63, c. 43, s. 16.

Payment  
into court

**39.**—(1) In any case where the statutory authority deems it advisable, it may, without an order, pay the compensation agreed upon or determined into the office of the Accountant of the Supreme Court together with a sum equal to the interest thereon at the rate of 6 per cent a year for six months.

Payment  
out of  
court

(2) Upon an application for payment out of court of compensation paid into court, a judge of the Supreme Court may direct that such notice of the application be given by publication or otherwise as he deems proper and may direct the trial of an issue or make such order with respect to the payment out of court of compensation and as to costs as he deems reasonable.



(3) Where an order is obtained under subsection 2 in less <sup>Adjustment of interest</sup> than six months after the payment of the compensation into court, the judge making the order may direct that a proportionate part of the interest be returned to the statutory authority.

(4) Where unborn issue or an unascertained person or class <sup>Where unborn issue interested</sup> is interested in compensation paid into court, a judge of the Supreme Court may appoint such person as he deems proper to represent them, and any order made under this section is binding on them. 1962-63, c. 43, s. 17.

**40.**—(1) Where land that has been expropriated is vested <sup>Possession of expropriated land</sup> in an expropriating authority and the expropriating authority has served the registered owner with a notice that it requires possession of the land on the date specified therein, the expropriating authority, subject to any agreement to the contrary and if no application is made under subsection 3, shall take possession of the land on the date specified in the notice.

(2) Subject to subsection 3, the date for possession shall be <sup>Date for possession</sup> at least three months after the date of the serving of the notice of possession.

(3) A registered owner or an expropriating authority may, <sup>Application for postponement of possession</sup> upon such notice as the judge directs, apply to a judge for an adjustment of the date for possession specified in the notice of possession, and the judge, if he considers that under all the circumstances the application should be granted, may order that the date for possession shall be on such earlier or later date as is specified in the order. 1962-63, c. 43, s. 19, *amended*.

**41.**—(1) Where resistance or opposition is made to the <sup>Warrant to put down resistance to entry, etc.</sup> expropriating authority or any person authorized by it in entering upon, using or taking possession of land when it is entitled so to do, it may apply to a judge for a warrant directing the sheriff to put down the resistance or opposition.

(2) The judge shall, in writing, appoint a time and place <sup>Hearing</sup> for the hearing of the application and in his appointment may direct that it shall be served upon such person as he prescribes.

(3) On proof of the resistance or opposition, the judge may <sup>Issue of warrant</sup> issue a warrant.

(4) The sheriff shall forthwith execute the warrant and <sup>Return</sup> make a return to the judge of the execution thereof. 1962-63, c. 43, s. 20, *amended*.

Abandonment of expropriated land

**42.**—(1) Where, at any time before the compensation upon an expropriation is paid in full, the land or any part thereof is found to be unnecessary for the purposes of the expropriated authority or if it is found that a more limited estate or interest therein only is required, the expropriating authority shall so notify each owner of the abandoned land, or estate or interest, who is served or entitled to be served with the notice of expropriation, who may, by election in writing,

- (a) take the land, estate or interest back, in which case he has the right to compensation for consequential damages; or
- (b) require the expropriating authority to retain the land, estate or interest, in which case he has the right to full compensation therefor. *New.*

Revesting

(2) Where all the owners elect to take the land, estate or interest back under clause *a* of subsection 1, the expropriating authority may, by an instrument signed by it and registered in the proper registry or land titles office and served on each owner, declare that the land or part thereof is not required and is abandoned by the expropriating authority or that it is intended to retain only such limited estate or interest as is mentioned in the instrument, and thereupon,

- (a) the land declared to be abandoned revests in the owner from whom it was expropriated and those entitled to claim under him; or
- (b) in the event of a limited estate or interest only being retained by the expropriating authority, the land so revests subject to such limited estate or interest. 1962-63, c. 43, s. 21 (1), *amended.*

Disposal of expropriated lands

**43.** Where lands that have been expropriated and are in the possession of the expropriating authority, are found by the expropriating authority to be no longer required for its purposes, the expropriating authority shall not, without the approval of the approving authority, dispose of the lands without giving the owners from whom the land was taken the first chance to repurchase the lands on the terms of the best offer received by the expropriating authority. *New.*

Time for application

**44.** Any application to set aside or quash any proceeding or step taken under this Act shall be made within thirty days after the proceeding or step in respect of which the application is made, but this section does not apply where the applicant was entitled to and not given notice of the proceeding or step or where the proceeding or step was a nullity. *New.*



**45.** The Lieutenant Governor in Council may make Regulations regulations,

- (a) prescribing rates of interest for the purposes of section 20;
- (b) prescribing forms for the purposes of this Act and providing for their use;
- (c) prescribing procedures respecting applications to and hearings by inquiry officers and boards of negotiation. *New.*

**46.**—(1) This Act applies in respect of expropriations for which a plan has not been registered under section 4 of *The Expropriation Procedures Act, 1962-63* before this Act comes into force, and an expropriation for which a plan has been registered under section 4 of the said Act before this Act comes into force shall be continued in accordance with *The Expropriation Procedures Act, 1962-63*, except that where the compensation has not been agreed upon between the parties and no evidence has been heard by a tribunal under *The Expropriation Procedures Act, 1962-63*, other than the board of negotiation, sections 13 to 21, 23, 24, 29, 33, 34, 35 and 42 apply thereto.

(2) Until section 28 is proclaimed in force, the Ontario Municipal Board shall be deemed to be the Land Compensation Board. *New.*

**47.** *The Expropriation Procedures Act, 1962-63*, *The Expropriation Procedures Amendment Act, 1965* and *The Expropriation Procedures Amendment Act, 1966* are repealed.

**48.**—(1) This Act, except section 28, comes into force on the day it receives Royal Assent.

(2) Section 28 comes into force on a day to be named by the Lieutenant Governor by his proclamation.

**49.** This Act may be cited as *The Expropriations Act*.





The Expropriations Act, 1968-69

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*1st Reading*

November 25th, 1968

*2nd Reading*

December 4th, 1968

*3rd Reading*

December 20th, 1968

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MR. WISHART

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## BILL 6

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

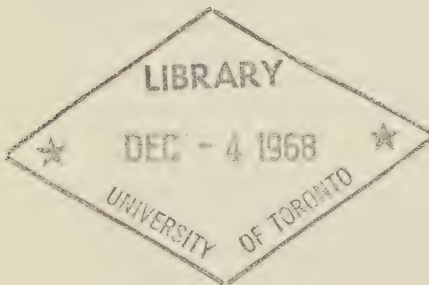
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### An Act to amend The Municipal Act

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MR. DEANS

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EXPLANATORY NOTE

The Bill empowers municipalities to control rents.

BILL 6

1968-69

## An Act to amend The Municipal Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. *The Municipal Act* is amended by adding thereto the following section: R.S.O. 1960,  
c. 249,  
amended

378a.—(1) In this section, Interpre-  
tation

(a) “lease” means an enforceable contract for the tenancy of living accommodation for a term of one month, or longer, whether expressed or implied;

(b) “rent”, when used as a noun, means any payment or benefit in consideration for the occupation of living accommodation.

(2) By-laws may be passed by the councils of local municipalities, including metropolitan and regional municipalities but not the area municipalities thereof: Rent control  
by-laws

1. Providing for the controlling of leases and rents for living accommodation, or any class thereof.

2. For establishing a rent control board and empowering the board to determine by order the maximum rents that may be charged, subject to the by-laws, and providing for procedures respecting the functions of the board, including hearings and appeals to the county or district court.

(3) Any person who contravenes a by-law passed under subsection 2 or any order of the rental control board established under such by-law is guilty of an offence and, on summary conviction, is liable to a fine of not more than \$2,000. Penalty

Commence-  
ment

**2.** This Act comes into force on the day it receives Royal Assent.

Short title

**3.** This Act may be cited as *The Municipal Amendment Act, 1968-69*.









An Act to amend The Municipal Act

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*1st Reading*

November 25th, 1968

*2nd Reading*

*3rd Reading*

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MR. DEANS

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A20N  
B  
B 56

BILL 7

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

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**An Act to provide for the Appointment of a  
Commissioner to investigate Administrative  
Decisions and Acts of Officials of the Govern-  
ment of Ontario and its Agencies, and to  
define the Commissioner's Powers and Duties**

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MR. SINGER

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## BILL 7

1968-69

**An Act to provide for the Appointment of a Commissioner to investigate Administrative Decisions and Acts of Officials of the Government of Ontario and its Agencies, and to define the Commissioner's Powers and Duties**

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** In this Act,

Interpre-  
tation

- (a) "agency" means an agency of the Government of Ontario;
- (b) "Commissioner" means the Commissioner of the Legislature appointed under this Act;
- (c) "department" means a department of the Government of Ontario;
- (d) "minister" means a member of the Executive Council.

**2.** There shall be appointed by the Lieutenant Governor in Council on the recommendation of the Assembly as an officer of the Legislature a commissioner, to be called the Commissioner of the Legislature, who shall exercise the powers and perform the duties specified in this Act.

**3.** The Commissioner shall not be a member of the Assembly and shall not hold any office of trust or profit, other than his office as Commissioner, or engage in any occupation for reward outside the duties of his office.

**4.—(1)** The recommendation for the appointment of the Commissioner shall be made in the first session of every Legislature.



Re-appoint-  
ment

(2) Unless his office sooner becomes vacant, every person appointed as Commissioner shall hold office until his successor is appointed, and every such person may from time to time be re-appointed.

Resignation

(3) The Commissioner may at any time resign his office by a writing addressed to the Speaker of the Assembly or, if there is no Speaker or if the Speaker is absent from Ontario, to the Clerk of the Assembly.

Removal  
from office

**5.**—(1) The Commissioner may at any time be removed or suspended from his office by the Lieutenant Governor in Council on the recommendation of the Assembly for disability, neglect of duty, misconduct or upon a bankruptcy.

Suspension  
when  
Legislature  
not in  
session

(2) At any time when the Legislature is not in session, the Commissioner may be suspended from his office by the Lieutenant Governor in Council for disability, neglect of duty, misconduct or upon a bankruptcy proved to the satisfaction of the Lieutenant Governor in Council, but any such suspension shall not continue in force beyond the end of the next ensuing session of the Legislature.

Filling of  
vacancy

**6.**—(1) If the Commissioner dies, retires, resigns or is removed from office, the vacancy thereby created shall be filled in accordance with this section.

When  
Legislature  
in session

(2) If a vacancy in the office of Commissioner occurs at any time while the Legislature is in session, it shall be filled by the appointment of a Commissioner by the Lieutenant Governor in Council on the recommendation of the Assembly, but, if the vacancy occurs less than one month before the end of that session and no such recommendation is made in that session, subsection 3 applies as if the vacancy had occurred while the Legislature was not in session.

When  
Legislature  
not in  
session

(3) If such a vacancy occurs at any time while the Legislature is not in session, the Lieutenant Governor in Council may appoint a Commissioner to fill the vacancy, and the person so appointed shall, unless his office sooner becomes vacant, hold office until his appointment is confirmed by the Assembly, and, if the appointment is not so confirmed within two months after the commencement of the next ensuing session, the appointment lapses, and there shall be deemed to be another vacancy in the office of Commissioner.

Oath of  
office

**7.**—(1) Before entering upon his duties, the Commissioner shall take an oath that he will faithfully and impartially perform the duties of his office and that he will not, except in accordance with subsection 3 of section 16, divulge any information received by him under this Act.

(2) The oath shall be administered by the Speaker of the <sup>Idem</sup> Assembly or by the Clerk of the Assembly.

8.—(1) Subject to subsection 2, the Commissioner may <sup>Staff</sup> appoint such officers and employees as may be necessary for the efficient carrying out of his functions under this Act.

(2) The number of persons that may be appointed under <sup>Idem</sup> this section, whether generally or in respect of any specified duties or class of duties, shall from time to time be determined by the Lieutenant Governor in Council.

9.—(1) The principal function of the Commissioner is to <sup>Functions</sup> investigate any decision or recommendation made, including any recommendation made to a minister, or any act done or omitted, relating to a matter of administration and affecting any person or body of persons in his or its personal capacity, in or by any department or agency, or by any officer, employee or member thereof in the exercise of any power or function conferred on him by any Act.

(2) The Commissioner may make any such investigation <sup>Initiation of investigation</sup> either on a complaint made to him by any person or of his own motion, and he may commence any such investigation notwithstanding that the complaint may not on its face be against any such decision, recommendation, act or omission as aforesaid.

(3) Without limiting subsection 1, any committee of the <sup>Referrals\*by committees</sup> Assembly may at any time refer to the Commissioner, for investigation and report by him, any petition that is before that committee for consideration or any matter to which the petition relates, and, in any such case, the Commissioner shall, subject to any special directions of the committee, investigate the matters so referred to him so far as they are within his jurisdiction and make such report to the committee as he thinks fit, but nothing in section 12, 17 or 18 applies in respect of any investigation or report made under this subsection.

(4) The powers and duties conferred on the Commissioner <sup>Powers and duties paramount</sup> by this Act may be exercised and performed notwithstanding any provision in any Act to the effect that any decision, recommendation, act or omission mentioned in subsection 1 is final, or that no appeal lies in respect thereof, or that no proceeding or decision of the person or organization whose decision, recommendation, act or omission it is shall be challenged, reviewed, quashed or called in question.

(5) Nothing in this Act authorizes the Commissioner to <sup>Areas outside jurisdiction</sup> investigate,

- (a) any decision, recommendation, act or omission in respect of which there is under any Act a right of appeal or objection or a right to apply for a review on the merits of the case to any court or to any tribunal constituted by or under any Act, whether or not that right of appeal or objection or application has been exercised in the particular case and whether or not any time prescribed for the exercise of that right has expired; or
- (b) any decision, recommendation, act or omission of any person acting as a solicitor for the Crown or acting as counsel for the Crown in relation to any proceedings.

Determina-  
tion of  
jurisdiction

(6) If any question arises as to whether the Commissioner has jurisdiction to investigate any case or class of cases under this Act, he may, if he thinks fit, apply to the Supreme Court for a declaratory order determining the question.

Guide  
rules

**10.**—(1) The Assembly may from time to time, if it thinks fit, make general rules for the guidance of the Commissioner in the exercise of his functions, and may at any time in like manner revoke or vary any such rules.

Publication  
of reports

(2) Any such rules may authorize the Commissioner from time to time, in the public interest or in the interests of any person or department or agency, to publish reports relating generally to the exercise of his functions under this Act or to any particular case or cases investigated by him, whether or not the matters to be dealt with in any such report have been the subject of a report to the Assembly under this Act.

Publication  
of rules

(3) All such rules shall be printed and published.

Mode of  
complaint

**11.**—(1) Every complaint to the Commissioner shall be made in writing.

Letters  
to be  
forwarded

(2) Notwithstanding any Act, where a letter written by any person in custody on a charge or after conviction of any offence, or by any inmate of any private sanitarium within the meaning of *The Private Sanitaria Act* or an institution within the meaning of *The Mental Hospitals Act*, is addressed to the Commissioner, it shall be immediately forwarded, unopened, to the Commissioner by the person for the time being in charge of the place or institution where the writer of the letter is detained or of which he is an inmate.

R.S.O. 1960,  
cc. 307, 236

Commis-  
sioner may  
refuse to  
investigate  
complaint

**12.**—(1) If in the course of the investigation of any complaint it appears to the Commissioner,

- (a) that under the law or existing administrative practice there is an adequate remedy, other than the right to petition the Legislature, for the complainant, whether or not he has availed himself of it; or
- (b) that, having regard to all the circumstances of the case, any further investigation is unnecessary,

he may in his discretion refuse to investigate the matter further.

(2) Without limiting the generality of the powers conferred on the Commissioner by this Act, the Commissioner may in his discretion decide not to investigate, or, as the case may require, not to further investigate, any complaint if it relates to any decision, recommendation, act or omission of which the complainant has had knowledge for more than twelve months before the complaint is received by the Commissioner, or if in his opinion,

- (a) the subject-matter of the complaint is trivial;
- (b) the complaint is frivolous or vexatious or is not made in good faith; or
- (c) the complainant has not a sufficient personal interest in the subject-matter of the complaint.

(3) In any case where the Commissioner decides not to investigate or further investigate a complaint, he shall inform the complainant of his decision, and he may, if he thinks fit, state his reasons therefor.

**13.**—(1) Before investigating any matter under this Act, the Commissioner shall inform the deputy minister of the department affected, or, as the case may require, the administrative head of the agency affected, of his intention to make the investigation.

(2) Every investigation by the Commissioner under this Act shall be conducted in private.

(3) The Commissioner may hear or obtain information from such persons as he thinks fit, and he may make such inquiries as he thinks fit.

(4) It is not necessary for the Commissioner to hold any hearing and no person is entitled as of right to be heard by the Commissioner, but, if at any time during the course of an investigation it appears to the Commissioner that there



may be sufficient grounds for his making a report or recommendation that may adversely affect any department, agency or person, he shall give to that department, agency or person an opportunity to be heard, and at any such hearing the department, agency or person is entitled to counsel.

Con-  
sulta-  
tions

(5) The Commissioner may in his discretion, at any time during or after any investigation, consult any minister who is concerned in the matter of the investigation.

Idem

(6) On the request of any minister in relation to an investigation or in any case where an investigation relates to any recommendation made to a minister, the Commissioner shall consult that minister after making the investigation and before forming a final opinion on any of the matters referred to in subsection 1 or 2 of section 17.

Misconduct

(7) If, during or after any investigation, the Commissioner is of opinion that there is evidence of any breach of duty or misconduct on the part of any officer or employee of any department or agency, he shall refer the matter to the appropriate authority.

Regulation  
of procedure

(8) Subject to this Act and any rules made under section 10, the Commissioner may regulate his procedure in such manner as he thinks fit.

Evidence

**14.**—(1) Subject to this section and section 15, the Commissioner may from time to time require any person who in his opinion is able to give any information relating to any matter that is being investigated by him to furnish to him any such information and to produce any such document, paper or thing that in his opinion relates to any such matter and that may be in the possession or under the control of such person, whether or not such person is an officer, employee or member of a department or agency, and whether or not such document, paper or thing is in the custody or under the control of any such department or agency.

Power  
to take  
evidence  
on oath

(2) The Commissioner may summon before him and examine on oath,

- (a) any person who is an officer or employee or member of any department or agency and who in the Commissioner's opinion is able to give any information mentioned in subsection 1;
- (b) any complainant; or
- (c) with the prior approval of the Minister of Justice and Attorney General in each case, any other person who in the Commissioner's opinion is able to give such information,

and for that purpose may administer an oath.



(3) Subject to subsection 4, no person who is bound by any Act to maintain secrecy in relation to, or not to disclose, any matter shall be required to supply any information to or answer any question put by the Commissioner in relation to that matter, or to produce to the Commissioner any document, paper or thing relating to it, if compliance with that requirement would be in breach of the obligation of secrecy or non-disclosure. <sup>Duty to maintain secrecy paramount</sup>

(4) With the prior consent in writing of a complainant, any person to whom subsection 3 applies may be required by the Commissioner to supply information or answer any question or produce any document, paper or thing relating only to the complainant, and it is the duty of the person to comply with such requirement. <sup>Idem</sup>

(5) Every person has the same privileges in relation to the giving of information, the answering of questions and the production of documents, papers and things under this Act as witnesses have in any court. <sup>Privilege</sup>

(6) Except on the trial of a person for perjury, no statement made or answer given by that or any other person in the course of any inquiry by or any proceedings before the Commissioner is admissible in evidence against any person in any court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Commissioner shall be given against any person. <sup>Evidence not admissible elsewhere</sup>

(7) No person is liable to prosecution for an offence against any Act by reason of his compliance with any requirement of the Commissioner under this section. <sup>No prosecution</sup>

**15.—**(1) Where the Minister of Justice and Attorney General certifies that the giving of any information or the answering of any question or the production of any document, paper or thing might involve the disclosure of, <sup>Disclosure of certain matters not to be required</sup>

(a) the deliberations of the Executive Council; or

(b) proceedings of the Executive Council, or any committee thereof, relating to matters of a secret or confidential nature, and would be injurious to the public interest,

the Commissioner shall not require the information or answer to be given or, as the case may be, the document, paper or thing to be produced, but shall report the giving of such a certificate to the Legislature.

Rule as to  
privileged  
documents,  
etc., does  
not apply

(2) Subject to subsection 1, the rule of law that authorizes or requires the withholding of any document, paper or thing, or the refusal to answer any question, on the ground that the disclosure of the document, paper or thing or the answering of the question would be injurious to the public interest, does not apply in respect of any investigation by or proceedings before the Commissioner.

Secrecy

**16.**—(1) The Commissioner and every person holding any office or appointment under him shall maintain secrecy in respect of all matters that come to their knowledge in the exercise of their functions.

Oath

(2) Every person holding any office or appointment under the Commissioner shall, before he begins to perform his duties under this Act, take an oath, to be administered by the Commissioner, that he will not divulge any information received by him under this Act except for the purpose of giving effect to this Act.

Exception

(3) Notwithstanding subsection 1, the Commissioner may disclose in any report made by him under this Act such matters as in his opinion ought to be disclosed in order to establish grounds for his conclusions and recommendations.

Procedure  
after  
investigation

**17.**—(1) This section applies in every case where, after making any investigation under this Act, the Commissioner is of opinion that the decision, recommendation, act or omission that was the subject-matter of the investigation,

- (a) appears to have been contrary to law;
- (b) was unreasonable, unjust, oppressive, improperly discriminatory or was, in accordance with a rule of law or a provision of any Act or a practice that is or may be unreasonable, unjust, oppressive or improperly discriminatory;
- (c) was based wholly or partly on a mistake of law or fact; or
- (d) was wrong.

Idem

(2) This section also applies in any case where the Commissioner is of opinion that in the making of the decision or recommendation, or in the doing or omission of the act, a discretionary power has been exercised for an improper purpose or on irrelevant grounds or on the taking into account of irrelevant considerations, or that, in the case of a decision made in the exercise of any discretionary power, reasons should have been given for the decision.

(3) If in any case to which this section applies the Commissioner is of opinion, Opinion, etc., to be reported to department

- (a) that the matter should be referred to the appropriate authority for further consideration;
- (b) that the omission should be rectified;
- (c) that the decision should be cancelled or varied;
- (d) that any practice on which the decision, recommendation, act or omission was based should be altered;
- (e) that any law on which the decision, recommendation, act or omission was based should be reconsidered;
- (f) that reasons should have been given for the decision; or
- (g) that any other steps should be taken,

the Commissioner shall report his opinion and his reasons therefor to the appropriate minister and to the department or agency concerned, and may make such recommendations as he thinks fit, and in any such case he may request the department or agency to notify him, within a specified time, of the steps, if any, that it proposes to take to give effect to his recommendations.

(4) If within a reasonable time after the report is made no action is taken that seems to the Commissioner to be Report to Cabinet and Assembly adequate and appropriate, the Commissioner, in his discretion, after considering the comments, if any, made by or on behalf of the department or agency affected, may send a copy of the report and recommendations to the Lieutenant Governor in Council and may thereafter make such report to the Legislature on the matter as he thinks fit.

(5) The Commissioner shall attach to every report sent or Idem made under subsection 4 a copy of any comments made by or on behalf of the department or agency concerned.

(6) Notwithstanding anything in this section, the Commissioner shall not, in any report made under this Act, make Comment adverse to person any comment that is adverse to any person unless the person has been given an opportunity to be heard.

**18.**—(1) Where on any investigation under this Act the Commissioner makes a recommendation under subsection 3 Complainant to be informed of result of investigation of section 17 and no action that seems to the Commissioner to

be adequate and appropriate is taken thereon within a reasonable time, the Commissioner shall inform the complainant of his recommendation and make such comments on the matter as he thinks fit.

Idem

(2) The Commissioner shall in any case inform the complainant, in such manner and at such time as he thinks proper, of the result of the investigation.

Private  
clause

**19.** No proceedings of the Commissioner shall be held bad for want of form and, except on the ground of lack of jurisdiction, no proceedings or decision of the Commissioner shall be challenged, reviewed, quashed or called in question in any court.

Proceedings  
privileged

**20.—**(1) No proceedings lie against the Commissioner or against any person holding any office or appointment under the Commissioner for anything he may do or report or say in the course of the exercise or intended exercise of his functions under this Act, unless it is shown that he acted in bad faith.

Not  
compellable  
as witnesses

(2) Neither the Commissioner nor any person holding any office or appointment under the Commissioner shall be called upon to give evidence in any court or in any proceedings of a judicial nature in respect of anything coming to his knowledge in the exercise of his functions under this Act.

Privilege

(3) Anything said or any information supplied or any document, paper or thing produced by any person in the course of any inquiry by or proceedings before the Commissioner under this Act is privileged in the same manner as if the inquiry or proceedings were proceedings in a court.

Idem  
R.S.O. 1960,  
c. 211

(4) For the purposes of *The Libel and Slander Act*, any report made by the Commissioner under this Act shall be deemed to be privileged, and a fair and accurate report in a newspaper or a broadcast shall be deemed to be privileged.

Power  
to enter  
premises

**21.—**(1) For the purposes of this Act but subject to this section, the Commissioner may at any time enter upon any premises occupied by any department or agency and inspect the premises and, subject to sections 14 and 15, carry out therein any investigation that is within his jurisdiction.

Notice

(2) Before entering upon any such premises, the Commissioner shall notify the deputy minister of the department or, as the case may require, the administrative head of the agency that occupies the premises of his intention so to do.



**22.**—(1) With the prior approval of the Lieutenant Governor in Council, the Commissioner may from time to time, by writing under his hand, delegate to any person holding any office under him any of his powers under this Act, except this power of delegation and the power to make any report under this Act. Delegation of powers

(2) Any such delegation may be made to a specified person or to the holder for the time being of a specified office or to the holders of offices of a specified class. To whom powers may be delegated

(3) Every such delegation is revocable at will, and no such delegation prevents the exercise of any power by the Commissioner. Delegations revocable

(4) Any such delegation may be made subject to such restrictions and conditions as the Commissioner thinks fit, and may be made either generally or in relation to any particular case or class of cases. Scope of delegations

(5) Until any such delegation is revoked, it continues in force according to its tenor and, in the event of the Commissioner by whom it was made ceasing to hold office, continues to have effect as if made by his successor. Life of delegations

(6) Any person purporting to exercise any power of the Commissioner by virtue of such a delegation shall, when required to do so, produce evidence of his authority to exercise the power. Evidence of delegated powers

**23.** Without limiting his right to report at any other time, but subject to subsection 6 of section 17 and to any rules made under section 10, the Commissioner shall in each year make a report to the Legislature on the exercise of his functions under this Act. Annual report

**24.** Every person commits an offence against this Act and is liable on summary conviction to a fine of not more than \$500 who, Offences

- (a) without lawful justification or excuse, wilfully obstructs, hinders or resists the Commissioner or any other person in the exercise of his powers under this Act;
- (b) without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirement of the Commissioner or any other person under this Act; or

- (c) wilfully makes any false statement to or misleads or attempts to mislead the Commissioner or any other person in the exercise of his powers under this Act.

Provisions  
are in  
addition  
to other  
laws

**25.** The provisions of this Act are in addition to the provisions of any other Act or any rule of law under which any remedy or right of appeal or objection is provided for any person or any procedure is provided for the inquiry into or investigation of any matter, and nothing in this Act limits or affects any such remedy or right of appeal or objection or procedure.

Short title

**26.** This Act may be cited as *The Commissioner of the Legislature Act, 1968-69*.





An Act to provide for the Appointment of a Commissioner to investigate Administrative Decisions and Acts of Officials of the Government of Ontario and its Agencies, and to define the Commissioner's Powers and Duties

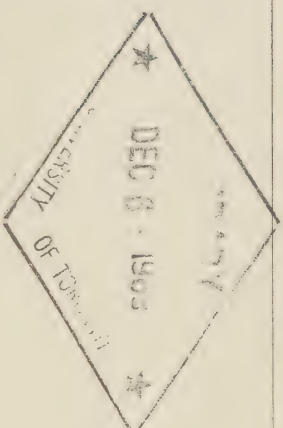
*1st Reading*

November 25th, 1968

*2nd Reading*

*3rd Reading*

MR. SINGER



## BILL 8

2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

**An Act to relieve Medical Practitioners, Registered  
Nurses and Others from Liability in respect of Voluntary  
Emergency First Aid and Medical Services**

MR. SHULMAN



TORONTO

PRINTED AND PUBLISHED BY FRANK FOGG, QUEEN'S PRINTER

#### EXPLANATORY NOTE

The purpose of this Bill is to relieve medical practitioners, registered nurses and others from liability in respect of voluntary emergency first aid assistance or medical services rendered at or near the scene of an accident or other sudden emergency.

## BILL 8

1968-69

**An Act to relieve Medical Practitioners,  
Registered Nurses and Others from Liability  
in respect of Voluntary Emergency First Aid  
and Medical Services**

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** In this Act,

Interpre-  
tation

- (a) "medical practitioner" means a person who is registered as a medical practitioner under *The Medical Act*; R.S.O. 1960, c. 234
- (b) "registered nurse" means a person who is registered as a nurse under *The Nurses Act, 1961-62*. 1961-62, c. 90

**2.** Where, in respect of a person who is ill, injured or unconscious as the result of an accident or other sudden emergency, Relief from liability for damages

- (a) a medical practitioner or registered nurse voluntarily and without expectation of compensation or reward renders emergency medical services or first aid assistance and such services or assistance are not rendered at a hospital or other place having adequate medical facilities and equipment; or
- (b) a person other than a person mentioned in clause *a* voluntarily renders emergency first aid assistance and such assistance is rendered at the immediate scene of the accident or emergency,

the medical practitioner, registered nurse or other person shall not be liable for damages for injuries to or the death of such person alleged to have been caused by an act or omission on his part in rendering the medical services or first aid assistance, unless it is established that the injuries or death were caused by gross negligence on his part.



Act does  
not apply  
to normal  
medical  
services

**3.** Nothing in section 2 shall be deemed to relieve a medical practitioner from liability for damages for injuries to or the death of any person caused by an act or omission on the part of the medical practitioner in respect of medical services rendered by him in the normal and ordinary course of his practice.

Commence-  
ment

**4.** This Act comes into force on the day it receives Royal Assent.

Short title

**5.** This Act may be cited as *The Voluntary Emergency First Aid and Medical Services Act, 1968-69*.







An Act to relieve Medical Practitioners,  
Registered Nurses and Others from Lia-  
bility in respect of Voluntary Emergency  
First Aid and Medical Services

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*1st Reading*

November 25th, 1968

*2nd Reading*

*3rd Reading*

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MR. SHULMAN

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**BILL 9**

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

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**An Act to amend The Public Utilities Act**

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MR. DEANS

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#### EXPLANATORY NOTE

The Bill prohibits security deposits for the supplying of a public utility.

## BILL 9

1968-69

## An Act to amend The Public Utilities Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 4 of section 50 of *The Public Utilities Act* is repealed and the following substituted therefor:

R.S.O. 1960,  
c. 335, s. 50,  
subs. 4,  
re-enacted

- (4) No corporation shall require any person to give security or make any other payment in advance as a condition to the supplying of any public utility to any building or premises or to the carrying of the public utility into the building or premises.

Security  
deposits

2. Section 1 applies to security given or payments made in advance being held by the corporation immediately before this Act comes into force.

Application

3. This Act comes into force on the day it receives Royal Assent.

Commence-  
ment

4. This Act may be cited as *The Public Utilities Amendment Act, 1968-69*.

Short title

An Act to amend The Public Utilities Act

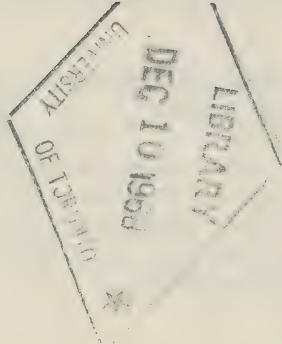
*1st Reading*

November 26th, 1968

*2nd Reading*

*3rd Reading*

MR. DEANS



**BILL 10**

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

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**An Act to amend The Coroners Act**

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MR. SHULMAN

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EXPLANATORY NOTE

Self-explanatory.

BILL 10

1968-69

## An Act to amend The Coroners Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. *The Coroners Act* is amended by adding thereto the following section: R.S.O. 1960,  
c. 69,  
amended

34a. Any person whose conduct is relevant to an inquest or who might be affected by the verdict of an inquest is entitled to cross-examine any witness giving evidence at the inquest and to call and examine witnesses in his own behalf, personally or through counsel, subject to the evidence so adduced being relevant, as determined by the coroner. Right of  
affected  
person  
to adduce  
evidence

2. This Act comes into force on the day it receives Royal Assent. Commence-  
ment

3. This Act may be cited as *The Coroners Amendment Act*, Short title  
1968-69.



An Act to amend The Coroners Act

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*1st Reading*

November 26th, 1968

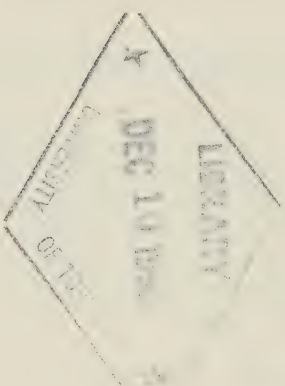
*2nd Reading*

*3rd Reading*

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MR. SHULMAN

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**BILL 11**

56

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

---

**An Act to establish the Universities Commission**

---

MR. REID (Scarborough East)

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#### EXPLANATORY NOTE

The purpose of the Bill is to establish an independent Universities Commission containing representation from the government, universities and the community to allocate the grants of public money and act in an inter-university advisory capacity.

BILL 11

1968-69

## An Act to establish the Universities Commission

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Interpre-  
tation

**1.** In this Act,

- (a) "Commission" means the Universities Commission established under section 2;
- (b) "university" means a university established by an Act of the Legislature and includes Queen's University.

**2.**—(1) A commission is established to be known as the Universities Commission, composed of fifteen members of whom, Universities  
Commission  
established

- (a) three shall be appointed by the Lieutenant Governor in Council for a term of two years;
- (b) seven shall be appointed jointly by the governing bodies of each university in Ontario for a term of three years; and
- (c) five shall be appointed for a term of two years by the members appointed under clauses *a* and *b* and who shall not be employed in the public service of Ontario or on the staff of a university in Ontario or a member of the governing body of a university in Ontario.

(2) Any member whose term of office has expired is eligible for re-appointment. Re-  
appointment

(3) Where the office of a member of the Commission becomes vacant before the expiration of his term, the body that appointed him may appoint another person to hold office as a member for the unexpired portion of the term. Vacancies

- Chairman (4) The members of the Commission shall elect a chairman from among themselves.
- Quorum (5) Ten members constitute a quorum of the Commission.
- Procedures (6) The Commission may make by-laws governing its own procedures.
- Functions of Commission **3.**—(1) All moneys appropriated by the Legislature for university purposes shall be paid to the Commission, which shall distribute the moneys to such universities, for such purposes and in such amounts as the Commission determines.
- Idem (2) The Commission shall study methods of co-ordination and co-operation among universities and make recommendations therefor.
- Employees **4.**—(1) The Commission may employ such persons as it deems necessary for its purposes and may determine their terms of employment, remuneration and other benefits.
- Idem (2) The persons employed in the Department of University Affairs immediately before this Act comes into force shall be offered employment by the Commission upon the coming into force of this Act upon the same terms of employment and for the same remuneration and other benefits as they were entitled to immediately before this Act comes into force.
- Application of R.S.O. 1960, c. 332 (3) *The Public Service Superannuation Act* applies to the employees of the Commission in the same manner as to a civil servant.
- Report **5.** The Commission shall make a report annually to the Provincial Secretary upon the affairs of the Commission and the Provincial Secretary shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session.
- Audit **6.** The accounts and financial transactions of the Commission shall be audited annually by the Provincial Auditor.
- Department of University Affairs dissolved Moneys appropriated for 1968-69 **7.**—(1) The Department of University Affairs is dissolved.
- (2) The moneys appropriated by the Legislature for the year from the 1st day of April, 1968 to the 31st day of March, 1969 for the purposes of the Department of University Affairs shall be deemed to have been appropriated for the purposes of the Commission.

**8.** *The Department of University Affairs Act, 1964* is <sup>1964, c. 24,</sup> repealed.  
repealed.

**9.** This Act comes into force on the 1st day of July, 1969. <sup>Commence-</sup>  
ment

**10.** This Act may be cited as *The Universities Commission* <sup>Short title</sup>  
*Act, 1968-69.*



An Act to establish  
the Universities Commission

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*1st Reading*

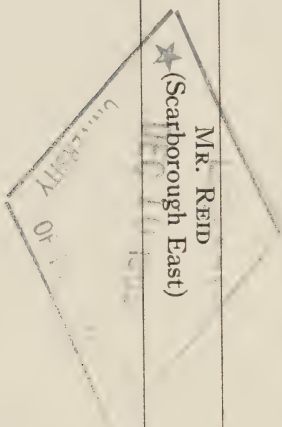
November 27th, 1968

*2nd Reading*

*3rd Reading*

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MR. REID  
★ (Scarborough East)



## BILL 12

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

---

**An Act to amend The Highway Traffic Act**

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MR. BEN

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TORONTO

PRINTED AND PUBLISHED BY FRANK FOGG, QUEEN'S PRINTER



BILL 12

1968-69

## An Act to amend The Highway Traffic Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. *The Highway Traffic Act* is amended by adding thereto the following sections: R.S.O. 1960,  
c. 172,  
amended

48a.—(1) Where a motor vehicle permit is issued after Log book the 1st day of September, 1969, for a motor vehicle for which no permit has been previously issued, the Department shall issue, with the permit, a log book in the form prescribed by the regulations and the fact of its issuance shall be noted on the permit.

(2) No person shall operate on the highway a motor Log book  
in  
vehicle vehicle for which a log book has been issued unless the log book accompanies the vehicle.

(3) Where a registered owner of a motor vehicle for which Entry of  
mileage a log book has been issued transfers his ownership, he shall, at the time of a transfer of ownership, note in the log book the total number of miles travelled by the vehicle.

(4) Every person who makes repairs to a motor vehicle Entry of  
repairs and  
certificate  
of road-  
worthiness for which a log book has been issued, or who examines such motor vehicle for mechanical defect, shall note in the log book any repairs made and shall certify in the log book whether or not the motor vehicle is roadworthy.

(5) No person shall operate a motor vehicle on the Operation  
of vehicle  
not road-  
worthy highway where the last certificate given under subsection 4 does not certify that the motor vehicle is roadworthy.

48b.—(1) The Lieutenant Governor in Council may make Regulations regulations prescribing the form of log books and the entries that shall be made therein.

## Offences

(2) Every person who contravenes any provision of section 48a or of the regulations made under subsection 1 is guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000.

Commence-  
ment

**2.** This Act comes into force on the 1st day of September, 1969.

## Short title

**3.** This Act may be cited as *The Highway Traffic Amendment Act, 1968-69*.









An Act to amend  
The Highway Traffic Act

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*1st Reading*

November 27th, 1968

*2nd Reading*

*3rd Reading*

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MR. BEN

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3  
56

**BILL 13**

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

---

**An Act to amend  
The Ontario Human Rights Code, 1961-62**

---

MR. BEN

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#### EXPLANATORY NOTE

The amendment makes the provision prohibiting discrimination in employment apply to domestic employment and to religious, philanthropic and educational non-profit organizations, which are at present excluded.

BILL 13

1968-69

**An Act to amend  
The Ontario Human Rights Code, 1961-62**

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** Subsection 4 of section 4 of *The Ontario Human Rights Code, 1961-62*, as amended by section 2 of *The Ontario Human Rights Code Amendment Act, 1967*, is repealed and the following substituted therefor: <sup>1961-62, c. 93, s. 4, subs. 4, re-enacted</sup>

- (4) This section does not apply to an exclusively fraternal or social organization that is not operated for private profit or to an organization that is operated primarily to foster the welfare of an ethnic group and that is not operated for private profit. <sup>Application of section</sup>

**2.** This Act comes into force on the day it receives Royal Assent. <sup>Commencement</sup>

**3.** This Act may be cited as *The Ontario Human Rights Code Amendment Act, 1968-69*. <sup>Short title</sup>



An Act to amend  
The Ontario Human Rights Code, 1961-62

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*1st Reading*

November 27th, 1968

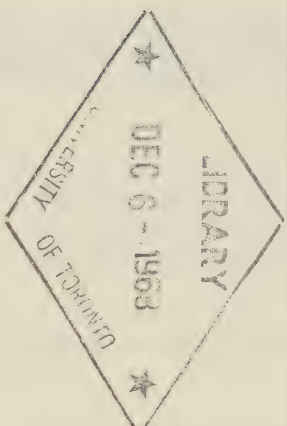
*2nd Reading*

*3rd Reading*

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MR. BEN

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**BILL 14**

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

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**An Act to amend The Election Act**

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MR. YOUNG

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#### EXPLANATORY NOTE

The purpose of this Bill is to reduce the age of persons who may vote at provincial elections from twenty-one years to eighteen years.

BILL 14

1968-69

## An Act to amend The Election Act

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.**—(1) Clause *a* of paragraph 1 of subsection 1 of section 17 of *The Election Act* is amended by striking out “twenty-one” and inserting in lieu thereof “eighteen”. R.S.O. 1960, c. 118, s. 17, subs. 1, par. 1, cl. *a*, amended

(2) Paragraph 2 of subsection 1 of the said section 17 is amended by striking out “twenty-one” in the eighth line and inserting in lieu thereof “eighteen”. R.S.O. 1960, c. 118, s. 17, subs. 1, par. 2, amended

**2.** This Act comes into force on the day it receives Royal Assent. Commence-  
ment

**3.** This Act may be cited as *The Election Amendment Act*, Short title 1968-69.

An Act to amend  
The Election Act

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*1st Reading*

November 27th, 1968

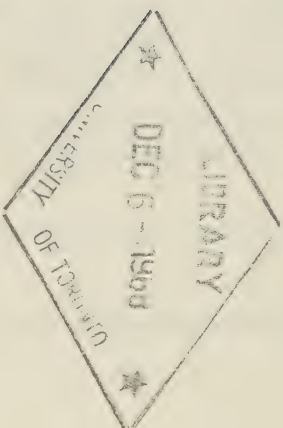
*2nd Reading*

*3rd Reading*

---

MR. YOUNG

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# **BILL 15**

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

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## **An Act to amend The Ontario Water Resources Commission Act**

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MR. SHULMAN

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#### EXPLANATORY NOTE

The purpose of the Bill is to prevent eutrophication of watercourses.

BILL 15

1968-69

**An Act to amend  
The Ontario Water Resources Commission Act**

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** *The Ontario Water Resources Commission Act* is amended by adding thereto the following section: R.S.O. 1960,  
c. 281,  
amended

27a. Every person who sells or offers for sale any detergent that contains a polyphosphate is guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000. Sale of  
detergents

**2.** *The Ontario Water Resources Commission Act* is amended by adding thereto the following section: R.S.O. 1960,  
c. 281,  
amended

31a. Every municipal sewage works that empties effluent into a lake, river, stream or other water or water-course shall so treat the sewage that the effluent does not contain any phosphate that is chemically capable of being removed. Sewage  
treatment  
to remove  
phosphates

**3.—(1)** This Act, except section 2, comes into force on the 1st day of September, 1969. Commence-  
ment

**(2)** Section 2 comes into force on the 1st day of January, 1970. Idem

**4.** This Act may be cited as *The Ontario Water Resources Commission Amendment Act, 1968-69*. Short title

**Publications**  
An Act to amend  
The Ontario Water Resources  
Commission Act

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*1st Reading*

November 27th, 1968

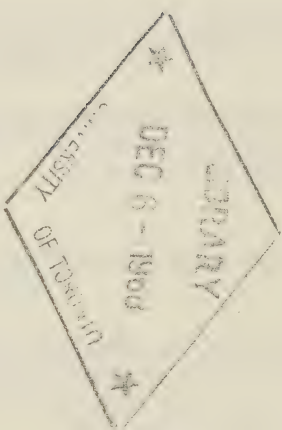
*2nd Reading*

*3rd Reading*

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MR. SHULMAN

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**BILL 16**

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

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**An Act to amend  
The Ontario Hurricane Relief Fund Act, 1955**

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MR. BALES

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#### EXPLANATORY NOTE

The amendment increases, effective the 1st day of August, 1968, the pensions of dependent widows and children in accordance with the increased rates for widows and children provided by *The Workmen's Compensation Act*, as amended by *The Workmen's Compensation Amendment Act, 1968*.

BILL 16

1968-69

**An Act to amend  
The Ontario Hurricane Relief Fund Act, 1955**

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** Subsection 2a of section 1 of *The Ontario Hurricane Relief Fund Act, 1955*, as enacted by section 1 of *The Ontario Hurricane Relief Fund Amendment Act, 1964*, is repealed and the following substituted therefor:

(2a) Notwithstanding subsection 2 and the agreement entered into thereunder, the amount of assistance and relief for dependent widows and children, effective from the 1st day of August, 1968, shall be in such amounts and subject to such terms, conditions and limitations as are provided by section 37 of *The Workmen's Compensation Act*, as amended by section 7 of *The Workmen's Compensation Amendment Act, 1968*.

**2.** This Act shall be deemed to have come into force on the 1st day of August, 1968.

**3.** This Act may be cited as *The Ontario Hurricane Relief Fund Amendment Act, 1968-69*.



An Act to amend The Ontario  
Hurricane Relief Fund Act, 1955

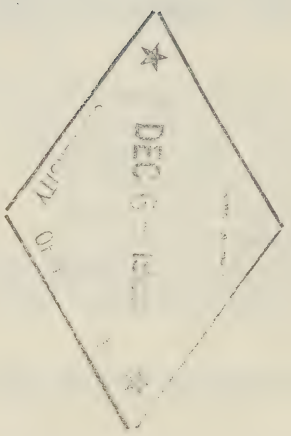
*1st Reading*

November 28th, 1968

*2nd Reading*

*3rd Reading*

MR. BALES



## BILL 16

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

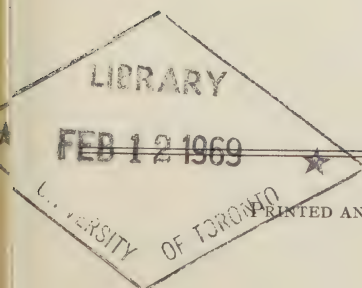
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An Act to amend  
The Ontario Hurricane Relief Fund Act, 1955

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MR. BALES

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TORONTO

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BILL 16

1968-69

**An Act to amend  
The Ontario Hurricane Relief Fund Act, 1955**

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** Subsection 2a of section 1 of *The Ontario Hurricane Relief Fund Act, 1955*, as enacted by section 1 of *The Ontario Hurricane Relief Fund Amendment Act, 1964*, is repealed and the following substituted therefor: 1955, c. 55, s. 1, subs. 2a (1964, c. 77, s. 1), re-enacted

(2a) Notwithstanding subsection 2 and the agreement entered into thereunder, the amount of assistance and relief for dependent widows and children, effective from the 1st day of August, 1968, shall be in such amounts and subject to such terms, conditions and limitations as are provided by section 37 of *The Workmen's Compensation Act*, as amended by section 7 of *The Workmen's Compensation Amendment Act, 1968*. Dependent widows and children R.S.O. 1960 c. 437 1968, c. 143

**2.** This Act shall be deemed to have come into force on the 1st day of August, 1968. Commencement

**3.** This Act may be cited as *The Ontario Hurricane Relief Fund Amendment Act, 1968-69*. Short title

An Act to amend The Ontario  
Hurricane Relief Fund Act, 1955

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*1st Reading*

November 28th, 1968

*2nd Reading*

December 10th, 1968

*3rd Reading*

December 20th, 1968

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Mr. BALES

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BILL 17

2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

An Act to amend The Milk Act, 1965

MR. STEWART



#### EXPLANATORY NOTES

SECTION 1. The purpose of the section is to clarify the methods by which The Ontario Milk Marketing Board may carry out its functions in accordance with the intent and purpose of the Act and The Ontario Milk Marketing Plan.

SECTION 2. Self-explanatory.

BILL 17

1968-69

## An Act to amend The Milk Act, 1965

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 8 of *The Milk Act, 1965* is amended by adding thereto the following subsection: 1965, c. 72, s. 8, amended

(6a) Where the Commission authorizes a marketing board to exercise any of the powers mentioned in subsection 1, the marketing board, in the exercise of such powers, may make regulations or orders or issue directions. Authority of marketing board to make regulations

2.—(1) Each of the following regulations:

Regulations declared valid and binding

1. Ontario Regulation 294/65, as amended by Ontario Regulations 160/66, 201/66, 261/66, 390/66, 194/67, 58/68 and 216/68.
2. Ontario Regulation 52/68, as amended by Ontario Regulation 131/68.
3. Ontario Regulation 68/68 as amended by Ontario Regulation 336/68.
4. Ontario Regulation 69/68, as amended by Ontario Regulation 220/68.
5. Ontario Regulation 70/68, as amended by Ontario Regulations 130/68, 221/68 and 292/68.
6. Ontario Regulation 71/68, as amended by Ontario Regulation 132/68,

1965, c. 72

(a) shall be deemed to have been made under *The Milk Act, 1965*, as amended by this Act;

(b) is hereby declared valid and binding for all intents and purposes; and

(c) shall be deemed to have been valid and binding for all intents and purposes from the date on which the regulation was filed under *The Regulations Act*.

R.S.O. 1960,  
c. 349Powers  
not  
limited

(2) Nothing in subsection 1 limits the power of The Milk Commission of Ontario or The Ontario Milk Marketing Board, as the case may be, to amend or revoke any regulation mentioned in subsection 1.

Commence-  
ment

**3.** This Act comes into force on the day it receives Royal Assent.

Short title

**4.** This Act may be cited as *The Milk Amendment Act, 1968-69*.









An Act to amend The Milk Act, 1965

---

*1st Reading*

November 28th, 1968

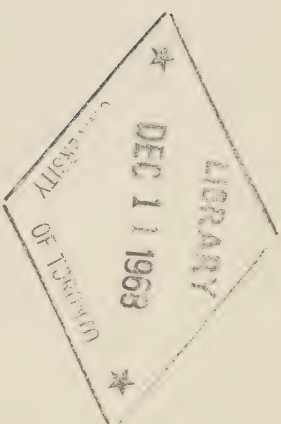
*2nd Reading*

*3rd Reading*

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MR. STEWART

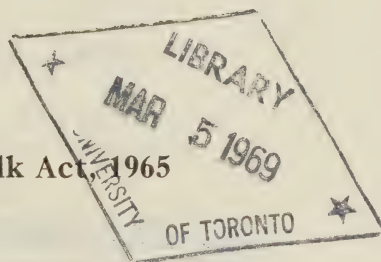
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## BILL 17

2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

An Act to amend The Milk Act, 1965



MR. STEWART

*(Reprinted as amended by the Agriculture and Food Committee)*

TORONTO

PRINTED AND PUBLISHED BY FRANK FOGG, QUEEN'S PRINTER

#### EXPLANATORY NOTES

SECTION 1. The purpose of the section is to clarify the methods by which The Ontario Milk Marketing Board may carry out its functions in accordance with the intent and purpose of the Act and The Ontario Milk Marketing Plan.

SECTION 2. Self-explanatory.

BILL 17

1968-69

## An Act to amend The Milk Act, 1965

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 8 of *The Milk Act, 1965* is amended by adding thereto the following subsection: <sup>1965, c. 72, s. 8, amended</sup>

(6a) Where the Commission authorizes a marketing board to exercise any of the powers mentioned in subsection 1, the marketing board, in the exercise of such powers, may make regulations or orders or issue directions. <sup>Authority of marketing board to make regulations</sup>

2.—(1) Each of the following regulations:

<sup>Regulations declared valid and binding</sup>

1. Ontario Regulation 294/65, as amended by Ontario Regulations 160/66, 201/66, 261/66, 390/66, 194/67, 58/68 and 216/68.
2. Ontario Regulation 52/68, as amended by Ontario Regulation 131/68.
3. Ontario Regulation 68/68 as amended by Ontario Regulation 336/68.
4. Ontario Regulation 69/68, as amended by Ontario Regulation 220/68.
5. Ontario Regulation 70/68, as amended by Ontario Regulations 130/68, 221/68 and 292/68.
6. Ontario Regulation 71/68, as amended by Ontario Regulation 132/68,

shall be deemed to have been made under *The Milk Act, 1965*, as amended by section 1 of this Act, and shall be deemed to have been filed under *The Regulations Act* on the day of actual filing. <sup>R.S.O. 1960, c. 349</sup>

Powers  
not  
limited

(2) Nothing in subsection 1 limits the power of The Milk Commission of Ontario or The Ontario Milk Marketing Board, as the case may be, to amend or revoke any regulation mentioned in subsection 1.

Commence-  
ment

3. This Act comes into force on the day it receives Royal Assent.

Short title

4. This Act may be cited as *The Milk Amendment Act, 1968-69*.









An Act to amend The Milk Act, 1965

---

*1st Reading*

November 28th, 1968

*2nd Reading*

December 4th, 1968

*3rd Reading*

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MR. STEWART

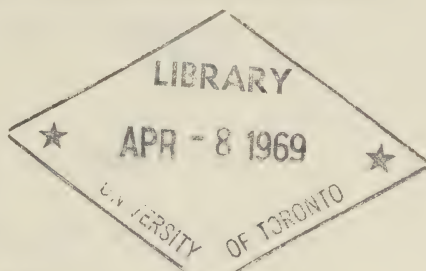
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(Reprinted as amended by the  
*Agriculture and Food Committee*)

## BILL 17

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69



An Act to amend The Milk Act, 1965

MR. STEWART

TORONTO

PRINTED AND PUBLISHED BY FRANK FOGG, QUEEN'S PRINTER



BILL 17

1968-69

## An Act to amend The Milk Act, 1965

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 8 of *The Milk Act, 1965* is amended by adding thereto the following subsection: <sup>1965, c. 72, s. 8, amended</sup>

(6a) Where the Commission authorizes a marketing board to exercise any of the powers mentioned in subsection 1, the marketing board, in the exercise of such powers, may make regulations or orders or issue directions. <sup>Authority of marketing board to make regulations</sup>

2.—(1) Each of the following regulations:

<sup>Regulations declared valid and binding</sup>

1. Ontario Regulation 294/65, as amended by Ontario Regulations 160/66, 201/66, 261/66, 390/66, 194/67, 58/68 and 216/68.
2. Ontario Regulation 52/68, as amended by Ontario Regulation 131/68.
3. Ontario Regulation 68/68 as amended by Ontario Regulation 336/68.
4. Ontario Regulation 69/68, as amended by Ontario Regulation 220/68.
5. Ontario Regulation 70/68, as amended by Ontario Regulations 130/68, 221/68 and 292/68.
6. Ontario Regulation 71/68, as amended by Ontario Regulation 132/68,

shall be deemed to have been made under *The Milk Act, 1965*, as amended by section 1 of this Act, and shall be deemed to have been filed under *The Regulations Act* on the day of actual filing. <sup>R.S.O. 1960, c. 349</sup>

Powers  
not  
limited

(2) Nothing in subsection 1 limits the power of The Milk Commission of Ontario or The Ontario Milk Marketing Board, as the case may be, to amend or revoke any regulation mentioned in subsection 1.

Commence-  
ment

**3.** This Act comes into force on the day it receives Royal Assent.

Short title

**4.** This Act may be cited as *The Milk Amendment Act, 1968-69*.









An Act to amend The Milk Act, 1965

---

*1st Reading*

November 28th, 1968

*2nd Reading*

December 4th, 1968

*3rd Reading*

March 25th, 1969

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MR. STEWART

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## BILL 18

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

---

**An Act to amend The Game and Fish Act, 1961-62**

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MR. SHULMAN

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TORONTO

PRINTED AND PUBLISHED BY FRANK FOGG, QUEEN'S PRINTER

#### EXPLANATORY NOTES

SECTION 1. Adds definition of leg-hold or steel-jaw trap.

SECTION 2. Prohibits the trapping of game by a leg-hold or steel-jaw trap, or by any other trap, snare or device of a design not approved by the Minister.

SECTION 3. Provides for regulations governing the approval of traps, snares or other devices.

BILL 18

1968-69

## An Act to amend The Game and Fish Act, 1961-62

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** Section 1 of *The Game and Fish Act, 1961-62*, as amended by section 1 of *The Game and Fish Amendment Act, 1964*, is further amended by adding thereto the following paragraph:

14a. “leg-hold or steel-jaw trap” means any trap or device that depends for its use or any part of its use on holding game by limb, tail or other extremity in such a way as to inflict pain or suffering upon the game or to cause it to inflict pain upon itself, other than that incidental to immediate death.

**2.** *The Game and Fish Act, 1961-62* is amended by adding thereto the following section:

27b. No person shall trap or attempt to trap game by the use of a leg-hold or steel-jaw trap or by the use of any other trap, snare or device except of a design that has been approved for the purpose by the Minister.

**3.** Section 84 of *The Game and Fish Act, 1961-62*, as amended by section 7 of *The Game and Fish Amendment Act, 1962-63* and section 11 of *The Game and Fish Amendment Act, 1966*, is further amended by adding thereto the following paragraph:

7. for the purposes of section 27b, providing for the granting of approvals to designs of traps, snares and other devices.

**4.** This Act comes into force on a day to be named by the Lieutenant Governor by his proclamation.

**5.** This Act may be cited as *The Game and Fish Amendment Act, 1968-69*.



An Act to amend  
The Game and Fish Act, 1961-62

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*1st Reading*

November 28th, 1968

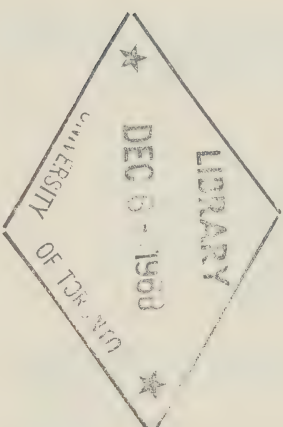
*2nd Reading*

*3rd Reading*

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MR. SHULMAN

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**BILL 19**

---

2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

---

**An Act to provide for the Governing Bodies of Universities**

---

MR. REID (Scarborough East)

---

#### EXPLANATORY NOTE

The Bill reconstructs the governing bodies of universities, replacing boards of governors and senates with one governing council having democratic representation of undergraduate and post-graduate students, faculty members, alumni (who would include the public community) and the administrative staff, and including other appointed and *ex officio* members representing governmental links.

BILL 19

1968-69

## An Act to provide for the Governing Bodies of Universities

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** In this Act,

Interpre-  
tation

- (a) "part-time student" means a student enrolled in a university for part-time attendance in a course leading to a degree;
- (b) "university" means a university established by an Act of the Legislature.

**2.** Notwithstanding any general or special Act, the governing body of every university shall be known as the Governing Council.

Governing  
Councils  
established

**3.—(1)** The Governing Council shall consist of not fewer than forty and not more than forty-eight members as follows:

Composi-  
tion of  
Council

- 1. One member who shall be appointed by the Lieutenant Governor in Council during pleasure.
- 2. The member of the Legislature and the member of the House of Commons of Canada in whose riding the main administrative structures of the university are situate, who shall be *ex officio* members.
- 3. The head of the council of the local municipality in which the main administrative structures of the university are situate, or a person designated by him.
- 4. Eleven or twelve members who are professors or associate professors of the university who shall be elected every four years by the professors and associate professors.
- 5. Eleven or twelve members who are full-time members of the faculty of the university, other than professors

and associate professors, who shall be elected every four years by the members of the faculty who are full-time employees other than professors and associate professors.

6. Six to eight members who are undergraduate, post-graduate and part-time students of the university each elected by the undergraduate, post-graduate and part-time students, respectively, for a term of one year and the number of members in each category shall be determined by the Governing Council as nearly as is practicable in the proportion of their enrolment in the university, except that the Governing Council may fix an equivalent of more than one part-time student to one undergraduate or post-graduate student for the purpose.
7. Five to seven members who shall be elected every four years by the graduates of the university.
8. One or two members who are full-time employees on the administrative staff of the university who shall be elected every four years by the full-time employees of the administrative staff.
9. The President of the university, who shall be an *ex officio* member, and one or two persons who shall be nominated by the President.

Determina-  
tion of  
number

(2) The Governing Council shall determine the numbers of members for the purposes of paragraphs 4, 5, 6, 7, 8 and 9 of subsection 1.

Student  
elections

(3) The elections for each of the categories of the members referred to in paragraph 6 of subsection 1 shall be conducted at the expense of the university by the student organization containing the largest membership of that category of students enrolled in the university, and the records and facilities of the university shall be made available to the student organization conducting the election to the extent necessary to prepare voters' lists and conduct the elections.

Other  
elections

(4) The Governing Council shall conduct the elections referred to in paragraphs 4, 5, 7 and 8 of subsection 1 and the ballot for the election referred to in paragraph 7 shall be taken by mail.

Vacancies

(5) An elected member who loses his eligibility for election while he is in office shall vacate his office, and where the office of an elected member becomes vacant for this or any

other reason before the expiration of his term, the remaining members elected by the same electors shall appoint a person who is eligible to be a candidate for election to the office to be a member for the remainder of the unexpired term.

**4.**—(1) All meetings of the Governing Council shall be open to the public, except that the Governing Council may, by resolution, exclude any persons other than members of the faculty, the administrative staff or the student body from a meeting. <sup>Public meetings</sup>

(2) All expenditures of or liabilities incurred by a university shall be authorized by the Governing Council at a meeting of the Council sitting as a whole. <sup>Authorization of existing expenditures</sup>

**5.**—(1) The board of governors and senate, or any corresponding body, of every university are dissolved. <sup>Dissolution of existing governing bodies</sup>

(2) All the powers and duties vested in the board of governors and senate, or any corresponding bodies, of each university are vested in the Governing Council established under this Act. <sup>Powers and duties of Council</sup>

**6.**—(1) The first elections referred to in subsection 1 of section 3 shall be conducted before the 1st day of November, 1969 by the board of governors of the university, or any corresponding body, and subject to subsection 2, the provisions of this Act applying to governing councils respecting the conduct of elections apply to the said board of governors for the purpose. <sup>First elections</sup>

(2) For the purposes of the first elections, the numbers of members referred to in paragraphs 4, 5, 6, 7 and 8 of subsection 1 of section 3 shall be either the minimum or the maximum number prescribed, as determined by the board of governors. <sup>Idem</sup>

**7.** Every university shall have a President appointed during pleasure by the Governing Council of the university. <sup>President</sup>

**8.**—(1) This Act, except sections 1, 2, 3, 4, 5 and 7, comes into force on the day it receives Royal Assent. <sup>Commencement</sup>

(2) Sections 1, 2, 3, 4, 5 and 7 come into force on the 1st day of November, 1969. <sup>Idem</sup>

**9.** This Act may be cited as *The Universities Act, 1968-69*. <sup>Short title</sup>







An Act to provide for  
the Governing Bodies of Universities

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*1st Reading*

December 2nd, 1968

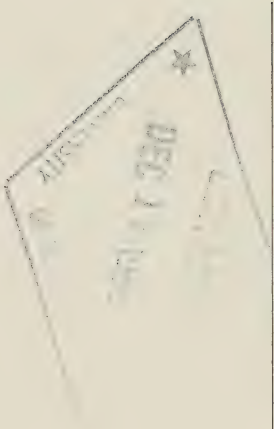
*2nd Reading*

*3rd Reading*

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Mr. REID (Scarborough East)

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**BILL 20**

2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

**An Act to amend  
The Ophthalmic Dispensers Act, 1960-61**

MR. SHULMAN

EXPLANATORY NOTE

Self-explanatory.

BILL 20

1968-69

**An Act to amend  
The Ophthalmic Dispensers Act, 1960-61**

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** *The Ophthalmic Dispensers Act, 1960-61* is amended by adding thereto the following section: 1960-61.  
c. 72,  
amended

21b. Notwithstanding the other provisions of this Act or any other general or special Act, no person shall offer for sale or sell spectacles or eyeglasses having frames made of cellulose nitrate. Sale of  
cellulose  
nitrate  
frames  
prohibited

**2.** This Act comes into force on the day it receives Royal Assent. Commence-  
ment

**3.** This Act may be cited as *The Ophthalmic Dispensers Amendment Act, 1968-69*. Short title

An Act to amend  
The Ophthalmic Dispensers Act, 1960-61

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*1st Reading*

December 2nd, 1968

*2nd Reading*

*3rd Reading*

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MR. SHULMAN

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DEC 1 1968  
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HOUSE OF COMMONS

## BILL 21

56

2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

**The Air Pollution Control Act, 1968-69**

MR. SHULMAN

TORONTO

PRINTED AND PUBLISHED BY FRANK FOGG, QUEEN'S PRINTER



#### EXPLANATORY NOTE

This Bill is based upon the principles of a local law of the City of New York passed in 1966.

BILL 21

1968-69

## The Air Pollution Control Act, 1968-69

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

### 1. In this Act,

Interpre-  
tation

- (a) "Act" includes the regulations;
- (b) "air contaminant" means any particulate matter or any gas or any combination thereof, other than water vapour or natural air;
- (c) "bituminous coal" has the meaning given by the regulations;
- (d) "combustion controller" means a control apparatus that automatically maintains the proper fuel-to-air ratio for optimum combustion of fuel;
- (e) "control apparatus" means any device that prevents or controls the emission of any air contaminant;
- (f) "Department" means the Department of Health;
- (g) "emission" means dispersion into the open air;
- (h) "equipment" means any device that is capable of causing the emission of an air contaminant into the open air, and includes a stack, conduit, flue, duct, vent or similar device connected or attached to, or serving equipment;
- (i) "equipment used in a manufacturing process" means any equipment in which the preponderance of the air contaminant emitted is caused by the manufacturing process;

(j) “fuel-burning equipment” means any furnace, boiler, water heater, device, mechanism, stack, structure, oven, stove, kiln, still or other apparatus that is used in the process of burning fuel or a similar combustible material, other than a motor vehicle;

(k) “gas” means a formless fluid that occupies space and that can be changed to a liquid or solid only by increased pressure with decreased or controlled temperature or by decreased temperature with increased or controlled pressure;

R.S.O. 1960,  
c. 98

(l) “local board” has the meaning given it in *The Department of Municipal Affairs Act*;

(m) “motor vehicle” means any equipment that is propelled by an internal combustion engine in or upon which a person or material may be transported on the ground;

(n) “municipality” includes a metropolitan municipality;

(o) “particulate matter” means any liquid, other than water, or any solid that is so finely divided as to be capable of becoming wind-blown or being suspended in air;

(p) “portable equipment” means any equipment that is designed to be transported from place to place for temporary operation;

R.S.O. 1960,  
c. 309

(q) “professional engineer” means a person who is registered or licensed under *The Professional Engineers Act*;

(r) “regulations” means the regulations made under this Act;

(s) “residual fuel oil” has the meaning given by the regulations;

(t) “vapour” means any material in a gaseous state that is formed from a substance, usually a liquid, by an increase in temperature.

Powers  
and duties

**2.** Any of the powers conferred upon the Department and any of the duties imposed upon the Department by this Act may be exercised or performed, as the case may be, by the Minister of the Department or by any one or more officials of the Department whom he may designate for the purpose.

**3.** No person shall construct, install or alter any equipment or control apparatus of any kind in any structure, other than in a one or two family dwelling, until an application, including plans and specifications, has been filed with the Department and an installation or alteration permit has been issued thereupon by the Department. Installation and alteration permits, equipment and control apparatus

**4.—(1)** No person shall use or cause to be used any new or altered equipment for which an installation or alteration permit was required or issued until an operating certificate has been issued therefor by the Department. Operating certificates, new and altered equipment

(2) No operating certificate or renewal thereof required by this Act shall be issued by the Department unless the applicant shows to the satisfaction of the Department that the equipment is designed to operate without causing a contravention of this Act and that the equipment incorporates advances in the art of air pollution control developed for the kind and amount of air contaminant emitted by the applicant's equipment. Idem, conditions precedent to issue

(3) Before an operating certificate or any renewal thereof is issued, the Department may require the applicant to conduct such tests as are in the opinion of the Department necessary to determine the kind or amount of the air contaminant emitted from the equipment or whether the equipment or fuel or the operation of the equipment contravenes this Act, and such tests shall be made at the expense of the applicant and shall be conducted in a manner approved by the Department and the results of the tests shall be reviewed and certified by a professional engineer. Idem, tests

(4) An operating certificate and any renewal thereof is valid for a period of three years from the date of issuance, unless it is sooner suspended or revoked. Idem, term

(5) Upon receipt of an application for an operating permit or a renewal thereof, the Department may issue a temporary operating certificate valid for a period of not more than sixty days. Temporary operating certificates

**5.—(1)** Commencing one year after this Act comes into force, no person shall cause or permit the use or operation of fuel burning equipment using residual fuel oil until an operating certificate has been issued therefor by the Department. Existing residual fuel oil equipment, certificates

(2) A certificate shall not be issued under subsection 1 unless the applicant's fuel burning equipment includes the installation and use of a combustion controller, an automatic Conditions precedent to issue of certificate

oil temperature maintenance device and an automatic water temperature maintenance device, or the equivalent of such devices, and, in addition thereto, such other requirements as the Department may specify.

Existing  
coal burning  
equipment,  
operating  
certificates

(3) Commencing two years after this Act comes into force, no person shall cause or permit the use or operation of fuel burning equipment using coal as fuel until an operating certificate has been issued therefor by the Department.

Conditions  
precedent  
to issue of  
certificate

(4) A certificate shall not be issued under subsection 3 unless the applicant's fuel burning equipment includes the installation and use of a combustion controller and an automatic water temperature maintenance device, or the equivalent of such devices, in addition to such other requirements as the Department may specify.

Existing  
refuse  
burning  
equipment,  
operating  
certificates

**6.—**(1) Commencing one year after this Act comes into force, no person shall cause or permit the use or operation of refuse burning equipment in any structure, other than in a multiple dwelling of six storeys or less, until an operating certificate therefor has been issued by the Department.

Idem,  
multiple  
dwellings  
of six  
storeys  
or less

(2) Commencing two years after this Act comes into force, no person shall cause or permit the use or operation of refuse burning equipment in any multiple dwelling of six storeys or less until an operating certificate has been issued therefor by the Department.

Conditions  
precedent  
to issue of  
certificate

(3) A certificate shall not be issued under this section unless the applicant's refuse burning equipment includes the installation and use of an auxiliary gas burner regulated by automatic firing clocks, an overfire air fan and nozzle system and control apparatus, such as a scrubber, or the equivalent of such devices, and, in addition thereto, such other requirements as the Department may specify.

Manufac-  
turing  
processes,  
operating  
certificates

**7.** Commencing one year after this Act comes into force, no person shall cause or permit the emission of any sulphur compound in the form of a gas, vapour or otherwise, from equipment used in a manufacturing process until an operating certificate has been issued therefor by the Department.

Portable  
equipment,  
operating  
certificates

**8.** Commencing one year after this Act comes into force, no person shall cause or permit the operation of portable equipment powered by an internal combustion engine, other than a motor vehicle, at any one location for a continuous period of ten days or more until an operating certificate has been issued therefor by the Department.



9. No person shall cause or permit to be operated any <sup>Existing</sup> equipment or process that is in existence when this Act comes into force except in accordance with this Act.

10.—(1) No person shall cause or permit the use of fuel <sup>Sulphur content of fuel restricted</sup> that contains more than the following percentages of sulphur by weight:

1. For a period of two years and four months commencing eight months after this Act comes into force,
  - i. coal, 2.2 per cent,
  - ii. residual fuel oil, 2.2 per cent.
2. For a period of two years commencing three years after this Act comes into force,
  - i. coal, 2.0 per cent,
  - ii. residual fuel oil, 2.0 per cent.
3. After the period mentioned in item 2 expires,
  - i. coal, 1.0 per cent,
  - ii. residual fuel oil, 1.0 per cent.

(2) Upon the application of any person engaged in the operation of fuel burning equipment using coal or residual fuel oil as a fuel, the Department may issue a certificate of exemption from the sulphur content restrictions of this section if the applicant proves to the satisfaction of the Department that the fuel burning equipment is operated in such a manner or is equipped with such control apparatus as to continuously prevent the emission of any sulphur compound or compounds in amounts greater than those that would be emitted from the burning in the same fuel burning equipment without such control apparatus of coal or residual fuel oil containing an amount of sulphur by weight not in excess of the maximum permitted at the applicable time by this section. <sup>Certificates of exemption</sup>

(3) As a condition for the issuance or renewal of a certificate of exemption, the applicant must, at his own expense, install scientific monitoring devices capable of continuously recording emissions of sulphur compounds and must submit the records thereof to the Department each day. <sup>Conditions of issuance</sup>

Prohibition  
and  
penalty

(4) No person shall cause or permit the emission of any sulphur compounds or compounds in an amount in excess of that permitted by the terms of a certificate of exemption issued under this section and, in the event of a contravention of this subsection, the Department may, as an alternative or in addition to any other penalty that may be imposed, suspend or revoke the certificate of exemption or take such other action as may be deemed to be appropriate.

Term of  
certificate of  
exemption

(5) A certificate of exemption or any renewal thereof is valid for a period of one year from the date of issuance unless it is sooner suspended or revoked.

Temporary  
certificates  
of  
exemption

(6) Upon the application of any person engaged in the operation of fuel burning equipment using coal or residual fuel oil as fuel, the Department may issue a temporary certificate of exemption from the sulphur content restrictions of this section if the applicant proves to the satisfaction of the Department that the application is for the purpose of conducting an experimental operation prior to the submission of an application for a certificate of exemption.

Term of  
temporary  
certificate of  
exemption

(7) A temporary certificate of exemption is valid for a period of three months from the date of issuance unless it is sooner suspended or revoked and may be renewed once only for an additional period of three months.

Conditions  
of issuance

(8) As a condition to the issuance or renewal of a temporary certificate of exemption, the applicant must at his own expense install scientific monitoring devices capable of continuously recording emissions of sulphur compounds and must submit the records thereof to the Department each day.

Bituminous  
coal, use  
restricted

**11.**—(1) Commencing three years after this Act comes into force, no person shall use bituminous coal in fuel burning equipment until he installs, uses and continuously maintains control apparatus certified by a professional engineer as capable of continuously preventing the emission of at least 99 per cent of all solid particulate matter that would otherwise be emitted from the use of bituminous coal in the fuel burning equipment.

Conditions  
for con-  
tinued use

(2) As a condition for continued use of bituminous coal under this Act, the Department may require,

- (a) the semi-annual submission of a statement by a professional engineer certifying to the continued 99 per cent efficiency of the control apparatus; and



- (b) the installation at the expense of the operator of scientific monitoring devices capable of continuously recording emissions of particulate matter or gases and the submission of a statement of the information so recorded.

(3) Notwithstanding subsections 1 and 2, commencing two <sup>Heat and hot water</sup> years after this Act comes into force, no person shall use bituminous coal in fuel burning equipment for the purpose of providing heat or hot water for any structure or building or any part thereof, but this prohibition does not apply to fuel burning equipment operated for the purpose of generating steam for off-premises sale, to which operation subsections 1 and 2 apply.

**12.**—(1) Commencing two years after this Act comes into <sup>Refuse disposal, new installations</sup> force, no person shall cause or permit the installation or construction of refuse burning equipment for the burning of garbage or other waste matter.

(2) Subsection 1 does not apply to refuse burning equip- <sup>Exceptions</sup> ment of a municipality or a local board.

(3) A system of hygienic control or hygienic disposal of <sup>Multiple dwellings</sup> putrescible garbage and equipment capable of reducing the volume of refuse by two-thirds by means other than burning that is constructed, maintained and operated in conformity with all legal requirements applicable thereto shall be provided in all multiple dwellings which are four or more storeys in height and occupied by more than twelve families, and which are erected two years or more after this Act comes into force.

(4) Mechanically operated garbage grinders for the dis- <sup>Kitchen garbage grinders</sup> charge of solid kitchen waste materials from dwelling units may be installed in all dwellings, including multiple dwellings that are erected two years or more after this Act comes into force, provided,

- (a) that the installation of any such grinder is not prohibited by any municipal by-law;
- (b) that any such grinder is designed and installed in conformity with all legal requirements applicable thereto; and
- (c) that any such grinder will discharge wastes at a reasonably uniform rate and in fluid form that will flow readily and in a manner that will not clog or stop up the drain line or sanitary sewer.

Refuse  
disposal,  
municipal  
incinerators,  
construction

**13.—**(1) No incinerator operated or to be operated by a municipality or a local board shall be constructed or substantially reconstructed unless there is installed and operated therein control apparatus that incorporates the most effective advances in the art of air pollution control as determined by the Department.

Idem,  
operation

(2) Commencing three years after this Act comes into force, no incinerator shall be operated by a municipality or a local board unless there is installed and operated therein control apparatus that incorporates the most effective advances in the art of air pollution control as determined by the Department.

Operators,  
etc.,  
to take  
courses of  
instruction

**14.—**(1) Every operator of fuel burning equipment using residual fuel oil, every operator of refuse burning equipment and every person who is charged with supervision of the operation of fuel burning equipment using residual fuel oil or of the operation of refuse burning equipment shall successfully complete, within two years after this Act comes into force, or within six months after the commencement of his employment, whichever is later, a course of instruction in air pollution control approved by the Department.

Employ-  
ment of un-  
qualified  
operators,  
etc.,  
prohibited

(2) No person shall employ an operator of fuel burning equipment using residual fuel oil, an operator of refuse burning equipment or a supervisor in charge of either of such operations unless the operator or supervisor, as the case may be, has complied with subsection 1.

Certificate  
of  
competence

(3) Upon the successful completion of a course of instruction mentioned in subsection 1, the operator or supervisor, as the case may be, shall be given a certificate stating his name and the date issued and certifying that he has successfully completed the course mentioned, which certificate shall be posted in a prominent place at or near the equipment that he operates or supervises.

Sealing of  
equipment

**15.** The Department may seal any equipment installed or operated in contravention of this Act.

Separate  
offences

**16.—**(1) The operation of any equipment in contravention of any provision of this Act shall be deemed a separate and distinct contravention as to each day of such operation.

Offences  
and  
penalties

(2) Any person who contravenes any provision of this Act is guilty of an offence and on summary conviction is liable to a fine of not less than \$25 and not more than \$1,000 or to imprisonment for a term of not more than six months, or to both.

**17.** The Lieutenant Governor in Council may make such <sup>Regulations</sup> regulations with respect to air pollution control as he deems necessary for carrying out the purposes of this Act, and in particular,

- (a) defining bituminous coal and residual fuel oil for the purposes of this Act by reference to a recognized code of standards or a part thereof or otherwise;
- (b) respecting the emission of air contaminants;
- (c) requiring and prescribing alterations to equipment and processes in existence when this Act comes into force in order that they may be operated in compliance with this Act;
- (d) prescribing methods, by reference to a recognized code of standards or part thereof or otherwise, for determining the sulphur content of fuels by weight;
- (e) respecting applications for and the issuance, renewal, suspension and revocation of permits and certificates, and imposing conditions and limitations thereon;
- (f) respecting the sealing of equipment and prescribing procedures with respect thereto;
- (g) approving courses of instruction for operators and supervisors of,
  - (i) fuel burning equipment using residual fuel oil, or
  - (ii) refuse burning equipment;
- (h) prescribing forms and providing for their use;
- (i) prescribing fees.

**18.** The following are repealed:

Repealed:

- 1. Every air pollution control by-law of every muni- <sup>By-laws</sup> cipality.
- 2. *The Air Pollution Control Act, 1967.* 1967, c. 2
- 3. *The Air Pollution Control Amendment Act, 1968.* 1968, c. 3

**19.** This Act may be cited as *The Air Pollution Control* <sup>Short title</sup> *Act, 1968-69.*

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*1st Reading*

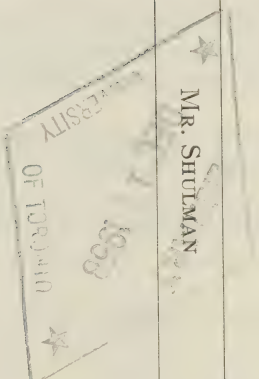
December 3rd, 1968

*2nd Reading*

*3rd Reading*

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★ MR. SHULMAN



**BILL 22**

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

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**An Act to amend  
The Prepaid Hospital and Medical Services Act**

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MR. ROWNTREE

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#### EXPLANATORY NOTE

The Bill makes prescription drug plans subject to the Act in the same manner as hospital and medical services plans.



BILL 22

1968-69

## An Act to amend The Prepaid Hospital and Medical Services Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clause *a* of section 1 of *The Prepaid Hospital and Medical Services Act* is amended by inserting after "service", in the third line "or providing prescription drugs", and by inserting after "services" in the sixth line "or prescription drugs", so that the clause shall read as follows:

- (a) "association" means any company or corporation incorporated for the purpose of establishing, maintaining and operating a hospital or medical service or providing prescription drugs on a non-profit prepayment basis, whereby any one or more of hospital, medical, surgical, nursing or dental services or prescription drugs or payment therefor may be provided to persons who become subscribers with, or members of, such company or corporation, or for these and similar purposes, but does not include an insurer licensed under *The Insurance Act* or a pension fund or employees' mutual benefit society incorporated under Part VI of *The Corporations Act*.

R.S.O. 1960,  
c. 304, s. 1,  
cl. a,  
amended

R.S.O. 1960,  
cc. 190, 71

2. Section 1 of *The Prepaid Hospital and Medical Services Act* is amended by adding thereto the following clauses:

R.S.O. 1960,  
c. 304, s. 1,  
amended

- (aa) "pharmacist" means a person registered as a pharmaceutical chemist under *The Pharmacy Act*;

R.S.O. 1960,  
c. 295

- (ab) "prescription drug" means a drug as defined in *The Pharmacy Act* dispensed upon the prescription of a legally qualified medical practitioner or dentist to a named person, and includes such drug mixed with any other drug or substance.



R.S.O. 1960,  
c. 304, s. 4,  
amended

**3.** Section 4 of *The Prepaid Hospital and Medical Services Act* is amended by inserting after "service" in the second line "or prescription drugs", so that the section shall read as follows:

No asso-  
ciation to  
carry on  
business  
unless  
registered

4. No association shall, in Ontario, contract to furnish hospital, medical, surgical, nursing or dental service or prescription drugs, or any combination of them, on a prepayment basis or make payment therefor unless registered under this Act.

R.S.O. 1960,  
c. 304, s. 5,  
subs. 1, cl. c,  
amended

**4.**—(1) Clause *c* of subsection 1 of section 5 of *The Prepaid Hospital and Medical Services Act* is amended by inserting after "physician" in the second line "pharmacist", so that the clause shall read as follows:

- (c) by a copy of every contract or proposed contract with a hospital, physician, pharmacist and other person for the rendering of services to subscribers or members.

R.S.O. 1960,  
c. 304, s. 5,  
subs. 2, cl. b,  
amended

(2) Clause *b* of subsection 2 of the said section 5 is amended by inserting after "physicians" in the second line "pharmacists", so that the clause shall read as follows:

- (b) that the contracts and proposed contracts with hospitals, physicians, pharmacists or other persons for the rendering of service to subscribers or members and the contracts or proposed contracts with subscribers or members are fair and reasonable.

R.S.O. 1960,  
c. 304, s. 6,  
subs. 2, cl. a,  
amended

**5.** Clause *a* of subsection 2 of section 6 of *The Prepaid Hospital and Medical Services Act* is amended by inserting after "physicians" in the second line "pharmacists", so that the clause shall read as follows:

- (a) that the contracts and proposed contracts with hospitals, physicians, pharmacists or other persons for the rendering of service to subscribers or members and the contracts or proposed contracts with subscribers and members are fair and reasonable.

Commence-  
ment

**6.** This Act comes into force on a day to be named by the Lieutenant Governor by his proclamation.

Short title

**7.** This Act may be cited as *The Prepaid Hospital and Medical Services Amendment Act, 1968-69*.







An Act to amend  
The Prepaid Hospital and  
Medical Services Act

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*1st Reading*

December 4th, 1968

*2nd Reading*

*3rd Reading*

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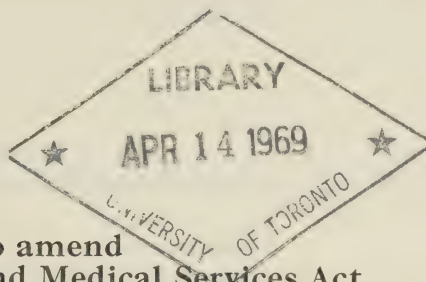
MR. ROWNTREE

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**BILL 22**

2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69



**An Act to amend  
The Prepaid Hospital and Medical Services Act**

MR. ROWNTREE

TORONTO

PRINTED AND PUBLISHED BY FRANK FOGG, QUEEN'S PRINTER





BILL 22

1968-69

## An Act to amend The Prepaid Hospital and Medical Services Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clause *a* of section 1 of *The Prepaid Hospital and Medical Services Act* is amended by inserting after "service" in the third line "or providing prescription drugs", and by inserting after "services" in the sixth line "or prescription drugs", so that the clause shall read as follows:

R.S.O. 1960,  
c. 304, s. 1,  
cl. a,  
amended

- (a) "association" means any company or corporation incorporated for the purpose of establishing, maintaining and operating a hospital or medical service or providing prescription drugs on a non-profit prepayment basis, whereby any one or more of hospital, medical, surgical, nursing or dental services or prescription drugs or payment therefor may be provided to persons who become subscribers with, or members of, such company or corporation, or for these and similar purposes, but does not include an insurer licensed under *The Insurance Act* or a pension fund or employees' mutual benefit society incorporated under Part VI of *The Corporations Act*.

R.S.O. 1960,  
cc. 190, 71

2. Section 1 of *The Prepaid Hospital and Medical Services Act* is amended by adding thereto the following clauses:

R.S.O. 1960,  
c. 304, s. 1,  
amended

- (aa) "pharmacist" means a person registered as a pharmaceutical chemist under *The Pharmacy Act*;

R.S.O. 1960,  
c. 295

- (ab) "prescription drug" means a drug as defined in *The Pharmacy Act* dispensed upon the prescription of a legally qualified medical practitioner or dentist to a named person, and includes such drug mixed with any other drug or substance.

R.S.O. 1960,  
c. 304, s. 4,  
amended

**3.** Section 4 of *The Prepaid Hospital and Medical Services Act* is amended by inserting after "service" in the second line "or prescription drugs", so that the section shall read as follows:

No asso-  
ciation to  
carry on  
business  
unless  
registered

4. No association shall, in Ontario, contract to furnish hospital, medical, surgical, nursing or dental service or prescription drugs, or any combination of them, on a prepayment basis or make payment therefor unless registered under this Act.

R.S.O. 1960,  
c. 304, s. 5,  
subs. 1, cl. c,  
amended

**4.**—(1) Clause *c* of subsection 1 of section 5 of *The Prepaid Hospital and Medical Services Act* is amended by inserting after "physician" in the second line "pharmacist", so that the clause shall read as follows:

(c) by a copy of every contract or proposed contract with a hospital, physician, pharmacist and other person for the rendering of services to subscribers or members.

R.S.O. 1960,  
c. 304, s. 5,  
subs. 2, cl. b,  
amended

(2) Clause *b* of subsection 2 of the said section 5 is amended by inserting after "physicians" in the second line "pharmacists", so that the clause shall read as follows:

(b) that the contracts and proposed contracts with hospitals, physicians, pharmacists or other persons for the rendering of service to subscribers or members and the contracts or proposed contracts with subscribers or members are fair and reasonable.

R.S.O. 1960,  
c. 304, s. 6,  
subs. 2, cl. a,  
amended

**5.** Clause *a* of subsection 2 of section 6 of *The Prepaid Hospital and Medical Services Act* is amended by inserting after "physicians" in the second line "pharmacists", so that the clause shall read as follows:

(a) that the contracts and proposed contracts with hospitals, physicians, pharmacists or other persons for the rendering of service to subscribers or members and the contracts or proposed contracts with subscribers and members are fair and reasonable.

Commence-  
ment

**6.** This Act comes into force on a day to be named by the Lieutenant Governor by his proclamation.

Short title

**7.** This Act may be cited as *The Prepaid Hospital and Medical Services Amendment Act, 1968-69*.







An Act to amend  
The Prepaid Hospital and  
Medical Services Act

---

*1st Reading*

December 4th, 1968

*2nd Reading*

March 10th, 1969

*3rd Reading*

March 25th, 1969

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MR. ROWNTREE

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BILL 23

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

---

**An Act to amend The Damage by Fumes Arbitration Act**

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MR. LAWRENCE (St. George)

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#### EXPLANATORY NOTES

SECTION 1. The language is brought into line with present-day conditions and to clarify the intent.

SECTION 2. The maximum sum to be raised annually to cover expenses was fixed at \$5,000 in 1924, \$10,000 in 1946, \$20,000 in 1955, and \$30,000 in 1958. It is now increased to \$50,000.

In addition, a number of changes in language are made to bring the section into line with present-day conditions and to clarify the intent.

BILL 23

1968-69

## An Act to amend The Damage by Fumes Arbitration Act

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 1 of section 2 of *The Damage by Fumes Arbitration Act* is amended by striking out "the smelting or roasting of nickel-copper ore or iron ore or from the treatment of sulphides for the production of sulphur or sulphuric acid for commercial purposes" in the third, fourth and fifth lines and inserting in lieu thereof "smelting, roasting, refining or otherwise treating ores or minerals", so that the subsection shall read as follows:

R.S.O. 1960,  
c. 86, s. 2,  
subs. 1,  
amended

- (1) Where damage is occasioned directly or indirectly to crops, trees or other vegetation by sulphur fumes arising from smelting, roasting, refining or otherwise treating ores or minerals, such damage may, subject to section 3, be determined by the arbitrator who has exclusive jurisdiction to determine the amount of such damage and to make an award.

Damage to  
crops, etc.

2. Section 6 of *The Damage by Fumes Arbitration Act* is repealed and the following substituted therefor:

R.S.O. 1960,  
c. 86, s. 6,  
re-enacted

- 6.—(1) A sum not exceeding \$50,000 in any year to cover the expenses of administering this Act, including the salary or other remuneration of the arbitrator and his assistants, is payable annually to the Province by the companies smelting, roasting, refining or otherwise treating ores or minerals in a manner that may result in the escape or release into the open air of sulphur fumes.

Expenses

- (2) The arbitrator at the close of each calendar year shall assess the amount for which each company smelting, roasting, refining or otherwise treating ores or minerals in a manner that may result in the

Assessment

escape or release into the open air of sulphur fumes is liable under subsection 1, and the amount so assessed against each company is payable to the Treasurer of Ontario within fifteen days after the mailing of a registered letter demanding payment thereof addressed to the last-known address of the company, but every assessment so made is subject to the approval of the Minister of Mines.

Commence-  
ment

**3.** This Act comes into force on the 1st day of January, 1969.

Short title

**4.** This Act may be cited as *The Damage by Fumes Arbitration Amendment Act, 1968-69*.







An Act to amend  
The Damage by Fumes Arbitration Act

---

*1st Reading*

December 4th, 1968

*2nd Reading*

*3rd Reading*

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MR. LAWRENCE (St. George)

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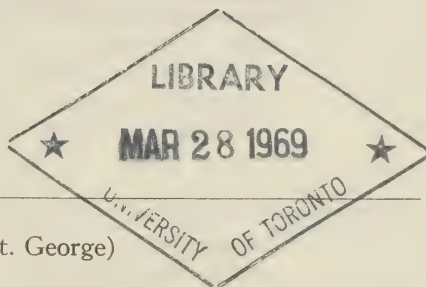




**BILL 23**

2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

**An Act to amend The Damage by Fumes Arbitration Act**



MR. LAWRENCE (St. George)

*(Reprinted as amended by the Committee of the Whole House)*

#### EXPLANATORY NOTES

SECTION 1. The language is brought into line with present-day conditions and to clarify the intent.

SECTION 2. The maximum sum to be raised annually to cover expenses was fixed at \$5,000 in 1924, \$10,000 in 1946, \$20,000 in 1955, and \$30,000 in 1958. It is now increased to \$50,000.

In addition, a number of changes in language are made to bring the section into line with present-day conditions and to clarify the intent.

BILL 23

1968-69

## An Act to amend The Damage by Fumes Arbitration Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 1 of section 2 of *The Damage by Fumes Arbitration Act* is amended by striking out "the smelting or <sup>R.S.O. 1960, c. 86, s. 2, subs. 1, amended</sup> roasting of nickel-copper ore or iron ore or from the treatment of sulphides for the production of sulphur or sulphuric acid for commercial purposes" in the third, fourth and fifth lines and inserting in lieu thereof "smelting, roasting, refining or otherwise treating ores or minerals", so that the subsection shall read as follows:

- (1) Where damage is occasioned directly or indirectly to <sup>Damage to crops, etc.</sup> crops, trees or other vegetation by sulphur fumes arising from smelting, roasting, refining or otherwise treating ores or minerals, such damage may, subject to section 3, be determined by the arbitrator who has exclusive jurisdiction to determine the amount of such damage and to make an award.

2. Section 6 of *The Damage by Fumes Arbitration Act* <sup>R.S.O. 1960, c. 86, s. 6, re-enacted</sup> is repealed and the following substituted therefor:

- 6.—(1) A sum not exceeding \$50,000 in any year to <sup>Expenses</sup> cover the expenses of administering this Act, including the salary or other remuneration of the arbitrator and his assistants, is payable annually to the Province by the companies smelting, roasting, refining or otherwise treating ores or minerals in a manner that may result in the escape or release into the open air of sulphur fumes.

- (2) The arbitrator at the close of each calendar year <sup>Assessment</sup> shall assess the amount for which each company smelting, roasting, refining or otherwise treating ores or minerals in a manner that may result in the

escape or release into the open air of sulphur fumes is liable under subsection 1, and the amount so assessed against each company is payable to the Treasurer of Ontario within fifteen days after the mailing of a registered letter demanding payment thereof addressed to the last-known address of the company, but every assessment so made is subject to the approval of the Minister of Health.

Commence-  
ment

**3.** This Act comes into force on the 1st day of January, 1969.

Short title

**4.** This Act may be cited as *The Damage by Fumes Arbitration Amendment Act, 1968-69*.









An Act to amend  
The Damage by Fumes Arbitration Act

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*1st Reading*

December 4th, 1968

*2nd Reading*

December 10th, 1968

*3rd Reading*

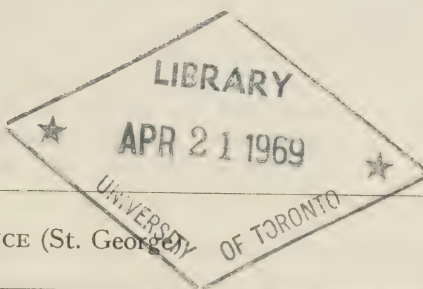
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MR. LAWRENCE (St. George)

*(Reprinted as amended by  
the Committee of the Whole House)*

2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

An Act to amend The Damage by Fumes Arbitration Act



MR. LAWRENCE (St. George)

TORONTO

PRINTED AND PUBLISHED BY FRANK FOGG, QUEEN'S PRINTER



BILL 23

1968-69

## An Act to amend The Damage by Fumes Arbitration Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 1 of section 2 of *The Damage by Fumes Arbitration Act* is amended by striking out "the smelting or roasting of nickel-copper ore or iron ore or from the treatment of sulphides for the production of sulphur or sulphuric acid for commercial purposes" in the third, fourth and fifth lines and inserting in lieu thereof "smelting, roasting, refining or otherwise treating ores or minerals", so that the subsection shall read as follows:

R.S.O. 1960,  
c. 86, s. 2,  
subs. 1,  
amended

- (1) Where damage is occasioned directly or indirectly to crops, trees or other vegetation by sulphur fumes arising from smelting, roasting, refining or otherwise treating ores or minerals, such damage may, subject to section 3, be determined by the arbitrator who has exclusive jurisdiction to determine the amount of such damage and to make an award.

Damage to  
crops, etc.

2. Section 6 of *The Damage by Fumes Arbitration Act* is repealed and the following substituted therefor:

R.S.O. 1960,  
c. 86, s. 6,  
re-enacted

- 6.—(1) A sum not exceeding \$50,000 in any year to cover the expenses of administering this Act, including the salary or other remuneration of the arbitrator and his assistants, is payable annually to the Province by the companies smelting, roasting, refining or otherwise treating ores or minerals in a manner that may result in the escape or release into the open air of sulphur fumes.

Expenses

- (2) The arbitrator at the close of each calendar year shall assess the amount for which each company smelting, roasting, refining or otherwise treating ores or minerals in a manner that may result in the

Assessment

escape or release into the open air of sulphur fumes is liable under subsection 1, and the amount so assessed against each company is payable to the Treasurer of Ontario within fifteen days after the mailing of a registered letter demanding payment thereof addressed to the last known address of the company, but every assessment so made is subject to the approval of the Minister of Health.

Commence-  
ment

**3.** This Act comes into force on the 1st day of January, 1969.

Short title

**4.** This Act may be cited as *The Damage by Fumes Arbitration Amendment Act, 1968-69*.









An Act to amend  
The Damage by Fumes Arbitration Act

---

*1st Reading*

December 4th, 1968

*2nd Reading*

December 10th, 1968

*3rd Reading*

March 31st, 1969

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MR. LAWRENCE (St. George)

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## BILL 24

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

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**An Act to amend The Mining Act**

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MR. LAWRENCE (St. George)

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TORONTO

PRINTED AND PUBLISHED BY FRANK FOGG, QUEEN'S PRINTER

#### EXPLANATORY NOTES

SECTION 1. The present maximum of 90 claims a year is removed.

SECTIONS 2 and 3. These provisions are necessary in order to introduce the universal tag system under which claim tags may be used anywhere in the Province without regard to mining division boundaries.

## BILL 24

1968-69

## An Act to amend The Mining Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 54 of *The Mining Act*, as amended by section 1 of *The Mining Amendment Act, 1965* and section 3 of *The Mining Amendment Act, 1967*, is repealed and the following substituted therefor: R.S.O. 1960, c. 241, s. 54, re-enacted

54. A licensee is not limited as to the number of mining claims that may be staked out and applied for in a licence year. Number of claims unlimited

2.—(1) Subsection 5 of section 62 of *The Mining Act*, as amended by section 4 of *The Mining Amendment Act, 1967*, is further amended by striking out “and letter or letters” in the fifth and sixth lines, so that the subsection shall read as follows: R.S.O. 1960, c. 241, s. 62, subs. 5, amended

(5) As soon as is reasonably possible after the recording of the mining claim and not later than six months thereafter, the holder of the claim shall affix or cause to be affixed securely to each of the corresponding corner posts of the claim a metal tag plainly marked or impressed with the recorded number of the claim, and the recorder shall supply such numbered tags free of charge. Tagging claim posts after recording

(2) The said section 62 is amended by adding thereto the following subsection: R.S.O. 1960, c. 241, s. 62, amended

(9) At the time of recording, the recorder shall add to each claim number the prefix allotted to his division and such prefix shall form part of the claim number. Division prefix to form part of claim number

3.—(1) Subsection 1 of section 63 of *The Mining Act* is amended by striking out “the proper” in the first line and R.S.O. 1960, c. 241, s. 63, subs. 1, amended

inserting in lieu thereof "any" and by striking out "under section 54" in the third line, so that the subsection shall read as follows:

Issue of  
claim tags  
before  
staking

- (1) A licensee may purchase from any mining recorder sets of metal tags for the number of mining claims that he is entitled to stake, and the purchase of such tags and the date thereof shall be endorsed by the mining recorder on the licence of the purchaser.

R.S.O. 1960,  
c. 241, s. 63,  
subs. 5,  
re-enacted

- (2) Subsection 5 of the said section 63 is repealed and the following substituted therefor:

Tags may  
be used in  
any division

- (5) Metal tags purchased under this section may be used for staking out mining claims in any mining division.

R.S.O. 1960,  
c. 241, s. 68a  
(1962-63,  
c. 84, s. 17),  
amended

4. Section 68a of *The Mining Act*, as enacted by section 17 of *The Mining Amendment Act, 1962-63*, is amended by adding thereto the following subsection:

Where  
surface  
rights  
required for  
public use

- (6) Where surface rights on an unpatented mining claim are required for the use of the Crown or other public use, this section applies *mutatis mutandis*.

R.S.O. 1960,  
c. 241, s. 101  
(1967, c. 54,  
s. 12),  
amended

5. Section 101 of *The Mining Act*, as enacted by section 12 of *The Mining Amendment Act, 1967*, is amended by adding thereto the following subsection:

Omission  
of reserva-  
tions, etc.

- (4) The Minister may omit reservations or provisions contained in subsection 1 from a lease issued under section 100c where such reservations or provisions are contrary to the purpose of the lease.

Commence-  
ment

6. This Act comes into force on a day to be named by the Lieutenant Governor by his proclamation.

Short title

7. This Act may be cited as *The Mining Amendment Act, 1968-69*.

SECTION 4. This provision provides a means of acquiring surface rights on unpatented mining claims where the rights are required for further use.

SECTION 5. The purpose of this amendment is to remove a conflict between sections 100c and 101.







---

*1st Reading*

December 4th, 1968

*2nd Reading*

*3rd Reading*

---

MR. LAWRENCE (St. George)

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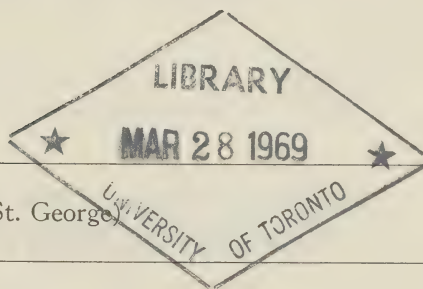


## BILL 24

2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

An Act to amend The Mining Act

Mr. LAWRENCE (St. George)



*(Reprinted as amended by the Committee of the Whole House)*

#### EXPLANATORY NOTES

SECTION 1. The present maximum of 90 claims a year is removed.

SECTIONS 2 and 3. These provisions are necessary in order to introduce the universal tag system under which claim tags may be used anywhere in the Province without regard to mining division boundaries.

## An Act to amend The Mining Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 54 of *The Mining Act*, as amended by section 1 of *The Mining Amendment Act, 1965* and section 3 of *The Mining Amendment Act, 1967*, is repealed and the following substituted therefor: R.S.O. 1960,  
c. 241, s. 54,  
re-enacted

54. A licensee is not limited as to the number of mining claims that may be staked out and applied for in a licence year. Number of  
claims  
unlimited

2.—(1) Subsection 5 of section 62 of *The Mining Act*, as amended by section 4 of *The Mining Amendment Act, 1967*, is further amended by striking out “and letter or letters” in the fifth and sixth lines, so that the subsection shall read as follows: R.S.O. 1960,  
c. 241, s. 62,  
subs. 5,  
amended

(5) As soon as is reasonably possible after the recording of the mining claim and not later than six months thereafter, the holder of the claim shall affix or cause to be affixed securely to each of the corresponding corner posts of the claim a metal tag plainly marked or impressed with the recorded number of the claim, and the recorder shall supply such numbered tags free of charge. Tagging  
claim posts  
after  
recording

(2) The said section 62 is amended by adding thereto the following subsection: R.S.O. 1960,  
c. 241, s. 62,  
amended

(9) At the time of recording, the recorder shall add to each claim number the prefix allotted to his division and such prefix shall form part of the claim number. Division  
prefix to  
form part  
of claim  
number

3.—(1) Subsection 1 of section 63 of *The Mining Act* is amended by striking out “the proper” in the first line and R.S.O. 1960,  
c. 241, s. 63,  
subs. 1,  
amended

inserting in lieu thereof "any" and by striking out "under section 54" in the third line, so that the subsection shall read as follows:

Issue of  
claim tags  
before  
staking

- (1) A licensee may purchase from any mining recorder sets of metal tags for the number of mining claims that he is entitled to stake, and the purchase of such tags and the date thereof shall be endorsed by the mining recorder on the licence of the purchaser.

R.S.O. 1960,  
c. 241, s. 63,  
subs. 5,  
re-enacted

- (2) Subsection 5 of the said section 63 is repealed and the following substituted therefor:

Tags may  
be used in  
any division

- (5) Metal tags purchased under this section may be used for staking out mining claims in any mining division.

R.S.O. 1960,  
c. 241, s. 68a  
(1962-63,  
c. 84, s. 17),  
amended

4. Section 68a of *The Mining Act*, as enacted by section 17 of *The Mining Amendment Act, 1962-63*, is amended by adding thereto the following subsection:

Where  
surface  
rights  
required for  
public use

- (6) Where surface rights on an unpatented mining claim are required for the use of the Crown or other public use, this section applies *mutatis mutandis*.

R.S.O. 1960,  
c. 241, s. 101  
(1967, c. 54,  
s. 12),  
amended

5. Section 101 of *The Mining Act*, as enacted by section 12 of *The Mining Amendment Act, 1967*, is amended by adding thereto the following subsection:

Omission  
of reserva-  
tions, etc.

- (4) The Minister may omit reservations or provisions contained in subsection 1 from a lease issued under section 100c where such reservations or provisions are contrary to the purpose of the lease.

Commence-  
ment

6. This Act comes into force on the 1st day of April, 1969.

Short title

7. This Act may be cited as *The Mining Amendment Act, 1968-69*.



SECTION 4. This provision provides a means of acquiring surface rights on unpatented mining claims where the rights are required for further use.

SECTION 5. The purpose of this amendment is to remove a conflict between sections 100c and 101.





An Act to amend The Mining Act

---

*1st Reading*

December 4th, 1968

*2nd Reading*

February 19th, 1969

*3rd Reading*

---

MR. LAWRENCE (St. George)

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*(Reprinted as amended by  
the Committee of the Whole House)*

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

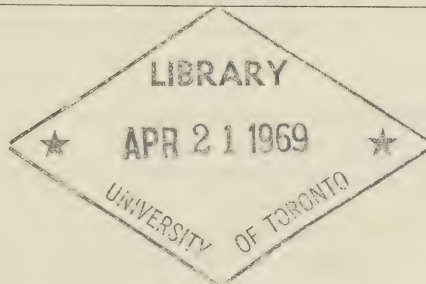
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An Act to amend The Mining Act

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Mr. LAWRENCE (St. George)

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BILL 24

1968-69

## An Act to amend The Mining Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 54 of *The Mining Act*, as amended by section 1 of *The Mining Amendment Act, 1965* and section 3 of *The Mining Amendment Act, 1967*, is repealed and the following substituted therefor: R.S.O. 1960, c. 241, s. 54, re-enacted

54. A licensee is not limited as to the number of mining claims that may be staked out and applied for in a licence year. Number of claims unlimited

2.—(1) Subsection 5 of section 62 of *The Mining Act*, as amended by section 4 of *The Mining Amendment Act, 1967*, is further amended by striking out “and letter or letters” in the fifth and sixth lines, so that the subsection shall read as follows: R.S.O. 1960, c. 241, s. 62, subs. 5, amended

(5) As soon as is reasonably possible after the recording of the mining claim and not later than six months thereafter, the holder of the claim shall affix or cause to be affixed securely to each of the corresponding corner posts of the claim a metal tag plainly marked or impressed with the recorded number of the claim, and the recorder shall supply such numbered tags free of charge. Tagging claim posts after recording

(2) The said section 62 is amended by adding thereto the following subsection: R.S.O. 1960, c. 241, s. 62, amended

(9) At the time of recording, the recorder shall add to each claim number the prefix allotted to his division and such prefix shall form part of the claim number. Division prefix to form part of claim number

3.—(1) Subsection 1 of section 63 of *The Mining Act* is amended by striking out “the proper” in the first line and R.S.O. 1960, c. 241, s. 63, subs. 1, amended



inserting in lieu thereof "any" and by striking out "under section 54" in the third line, so that the subsection shall read as follows:

Issue of  
claim tags  
before  
staking

- (1) A licensee may purchase from any mining recorder sets of metal tags for the number of mining claims that he is entitled to stake, and the purchase of such tags and the date thereof shall be endorsed by the mining recorder on the licence of the purchaser.

R.S.O. 1960,  
c. 241, s. 63,  
subs. 5,  
re-enacted

- (2) Subsection 5 of the said section 63 is repealed and the following substituted therefor:

Tags may  
be used in  
any division

- (5) Metal tags purchased under this section may be used for staking out mining claims in any mining division.

R.S.O. 1960,  
c. 241, s. 68a  
(1962-63,  
c. 84, s. 17),  
amended

4. Section 68a of *The Mining Act*, as enacted by section 17 of *The Mining Amendment Act, 1962-63*, is amended by adding thereto the following subsection:

Where  
surface  
rights  
required for  
public use

- (6) Where surface rights on an unpatented mining claim are required for the use of the Crown or other public use, this section applies *mutatis mutandis*.

R.S.O. 1960,  
c. 241, s. 101  
(1967, c. 54,  
s. 12),  
amended

5. Section 101 of *The Mining Act*, as enacted by section 12 of *The Mining Amendment Act, 1967*, is amended by adding thereto the following subsection:

Omission  
of reserva-  
tions, etc.

- (4) The Minister may omit reservations or provisions contained in subsection 1 from a lease issued under section 100c where such reservations or provisions are contrary to the purpose of the lease.

Commence-  
ment

6. This Act comes into force on the 1st day of April, 1969.

Short title

7. This Act may be cited as *The Mining Amendment Act, 1968-69*.







An Act to amend The Mining Act

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*1st Reading*

December 4th, 1968

*2nd Reading*

February 19th, 1969

*3rd Reading*

March 31st, 1969

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MR. LAWRENCE (St. George)

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**BILL 26**

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

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**An Act to provide for  
the Control of Air Pollution from Motor Vehicles**

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MR. SHULMAN

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TORONTO

PRINTED AND PUBLISHED BY FRANK FOGG, QUEEN'S PRINTER

#### EXPLANATORY NOTE

The Bill adopts the standards for motor vehicle air pollution recently enacted in California.



BILL 26

1968-69

## An Act to provide for the Control of Air Pollution from Motor Vehicles

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** In this Act,

Interpre-  
tation

- (a) "exhaust emission" means the substances emitted to the atmosphere from any opening downstream from the exhaust part of a motor vehicle engine;
- (b) "fuel evaporation emission" means vaporized fuel emitted to the atmosphere from the unfired fuel in a motor vehicle;
- (c) "Minister" means the Minister of Health;
- (d) "model year" followed by a designated year means the annual production period of the manufacturer in which a motor vehicle is manufactured and the designated year is the year in which such annual production period ends and, where the manufacturer does not have an annual production period, the twelve month period ending on the 1st day of November shall be deemed to be the annual production period;
- (e) "motor vehicle" means a vehicle propelled by an internal combustion engine and designed primarily for use on a highway.

**2.** No person shall sell or offer or expose for sale a new motor vehicle that does not have installed on or incorporated in it a system or device to prevent or lessen the emission into the outdoor atmosphere of air contaminants in accordance with the following:

Sale of  
new  
motor  
vehicles

Exhaust;  
1970 light  
vehicles

1. The exhaust emissions from a model year 1970 new gasoline-powered motor vehicle having gross weight of 6,000 pounds or less, as rated by the manufacturer, and having an engine displacement of fifty cubic inches or greater shall not contain more than,
  - i. 2.2 grams of hydrocarbons per mile of driving, and,
  - ii. 23 grams of carbon monoxide per mile of driving.

Exhaust;  
1971 light  
vehicles

2. The exhaust emissions from a model year 1971 new gasoline-powered motor vehicle having gross weight of 6,000 pounds or less, as rated by the manufacturer, and having an engine displacement of fifty cubic inches or greater shall not contain more than,
  - i. 2.2 grams of hydrocarbons per mile of driving,
  - ii. 23 grams of carbon monoxide per mile of driving, and
  - iii. 4.0 grams of oxides of nitrogen per mile of driving.

Exhaust;  
1972 and  
1973 light  
vehicles

3. The exhaust emissions from a model year 1972 or 1973 new gasoline-powered motor vehicle having gross weight of 6,000 pounds or less, as rated by the manufacturer, and having an engine displacement of fifty cubic inches or greater shall not contain more than,
  - i. 1.5 grams of hydrocarbons per mile of driving,
  - ii. 23 grams of carbon monoxide per mile of driving, and
  - iii. 3.0 grams of oxides of nitrogen per mile of driving.

Exhaust;  
1974 or  
later light  
vehicles

4. The exhaust emissions from a model year 1974 or later new gasoline-powered motor vehicle having gross weight of 6,000 pounds or less, as rated by the manufacturer, and having an engine displacement of fifty cubic inches or greater shall not contain more than,
  - i. 1.5 grams of hydrocarbons per mile of driving,

- ii. 23 grams of carbon monoxide per mile of driving, and
  - iii. 1.3 grams of oxides of nitrogen per mile of driving.
5. The exhaust emissions from a model year 1970 or 1971 new gasoline-powered motor vehicle having a gross weight of over 6,000 pounds, as rated by the manufacturer, shall not contain more than, <sup>Exhaust; 1970 and 1971 heavy vehicles</sup>
- i. 275 parts per million of hydrocarbons, and
  - ii. 1.5 per cent of carbon monoxide.
6. The exhaust emissions from a model year 1972 or later new gasoline-powered motor vehicle having a gross weight of over 6,000 pounds, as rated by the manufacturer, shall not contain more than, <sup>Exhaust; 1972 and later heavy vehicles</sup>
- i. 180 parts per million of hydrocarbons, and
  - ii. 1.0 per cent carbon monoxide.
7. Fuel evaporation emissions from the fuel system of a model year 1970 or later new gasoline-powered motor vehicle having a gross weight of 6,000 pounds or less, as rated by the manufacturer, and having an engine displacement of fifty cubic inches or greater shall not contain more than six grams of hydrocarbons per mile of driving. <sup>Fuel evaporation; 1970 or later light vehicles</sup>
8. The exhaust emissions from new diesel-powered motor vehicles shall not contain such quantity of hydrocarbons, carbon monoxide or oxides of nitrogen as is prescribed by the Lieutenant Governor in Council by regulation. <sup>Diesel exhaust</sup>

**3.**—(1) The Lieutenant Governor in Council may make <sup>Regulations</sup> regulations,

- (a) prescribing the content of exhaust emissions in new diesel-powered motor vehicles;
- (b) prescribing tests for determining whether systems or devices are sufficient for the purposes of this Act.

(2) The Minister may approve any testing method or <sup>Approval</sup> procedure proposed to be used to determine the effectiveness of a system or device to be incorporated in motor vehicles

on their manufacture and the use of the approved testing methods and procedures shall be deemed to be sufficient testing for the purposes of this Act.

Offence

**4.** Every person who contravenes any provision of this Act is guilty of an offence and on summary conviction is liable to a fine of not more than \$500.

Commence-  
ment

**5.** This Act comes into force on the day it receives Royal Assent.

Short title

**6.** This Act may be cited as *The Air Pollution by Motor Vehicles Act, 1968-69*.



An Act to provide for the Control of  
Air Pollution from Motor Vehicles

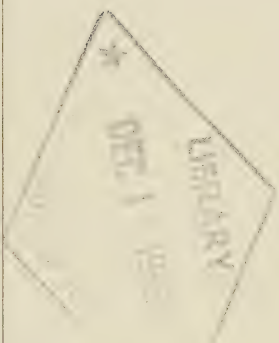
*1st Reading*

December 4th, 1968

*2nd Reading*

*3rd Reading*

MR. SHULMAN



**BILL 27**

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

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**An Act to Control Automobile Racing**

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MR. SHULMAN

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EXPLANATORY NOTE

Self-explanatory.

BILL 27

1968-69

## An Act to Control Automobile Racing

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** The closing of any public road, permanently or temporarily, for the purpose of automobile racing is forbidden except where specifically authorized by the Legislative Assembly of Ontario. <sup>Closing of public roads forbidden</sup>

**2.** This Act comes into force on the day it receives Royal Assent. <sup>Commencement</sup>

**3.** This Act may be cited as *The Automobile Racing Control Act, 1968-69*. <sup>Short title</sup>

# An Act to Control Automobile Racing

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*1st Reading*

December 5th, 1968

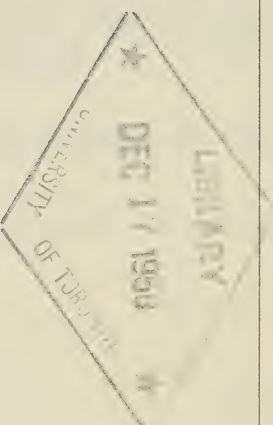
*2nd Reading*

*3rd Reading*

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MR. SHULMAN

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**BILL 28**

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

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**An Act to amend The Pounds Act**

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MR. DEACON

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#### EXPLANATORY NOTE

The amendments provide for the licensing and regulation of municipal pounds.

BILL 28

1968-69

## An Act to amend The Pounds Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. *The Pounds Act* is amended by adding thereto the following sections: R.S.O. 1960,  
c. 299,  
amended

20a.—(1) No person shall operate a municipal pound for domestic animals without a poundkeeper's licence issued by the Live Stock Commissioner. Pound-  
keeper's  
licence

(2) Upon application therefor and, Issue of  
licence

(a) with the consent of the council of the municipality in which the pound is to be operated;

(b) upon being satisfied that this Act is being complied with; and

(c) upon payment of any fees and deposit of any security prescribed by the regulations,

the Live Stock Commissioner shall issue the licence.

(3) Every licence is subject to the conditions that the licensee, Conditions  
of licence

(a) maintains the security required by the regulations;

(b) is in possession of premises that have at least one building for the impounding of animals for the purpose of this Act;

(c) provides in every building in which animals are kept facilities for the housing of each animal in a separate unit of sufficient size to allow the animal to stand and lie down in comfort;

(d) provides an adequate water supply in each separate unit; and

(e) complies with this Act and the regulations and any other condition that is imposed by the regulations.

Over-crowding

20b. No poundkeeper shall keep animals in greater numbers than may be kept, fed, watered and otherwise cared for on the premises without danger to their health or risk of injury.

Veterinarians and inspectors

20c.—(1) The Lieutenant Governor in Council may appoint such veterinarians and inspectors as are required for the purposes of this Act.

Inspection

(2) No licence shall be issued or renewed until a veterinarian appointed under subsection 1 has inspected the premises at which the animals are to be impounded, and has issued a certificate of approval.

Cleaning

20d. Every poundkeeper shall, at intervals of not more than twenty-four hours, clean and disinfect the premises in such manner as the regulations prescribe.

Records

20e. Every poundkeeper shall keep for at least twelve months after impounding each animal, a record showing,

(a) the name and address of the owner of the animal where known;

(b) the date of arrival of the animal at his premises and the date of its departure or destruction;

(c) an identification or description of the animal;

(d) the sale price of the animal, where applicable; and

(e) the name and address of the purchaser of the animal, where applicable.

Inspection

20f.—(1) The Live Stock Commissioner or an inspector or a veterinarian appointed under section 20c may enter any pound for the purpose of enforcing this Act.

Idem

(2) No person shall obstruct the Live Stock Commissioner or an inspector or a veterinarian in the per-



formance of his duties or furnish him with false information or refuse to permit the inspection of any animal.

- (3) Every person shall, when required by the Live Stock Commissioner or an inspector, produce any books, records or other documents relating to any animal impounded, destroyed or sold on the premises of the poundkeeper. <sup>Idem</sup>

- 20g. Every person who contravenes any of the provisions of section 20a, 20b, 20d, 20e, 20f or any regulation made under section 20h is guilty of an offence and on summary conviction is liable for a first offence to a fine of not more than \$100 and for a second or subsequent offence, to a fine of not more than \$500. <sup>Penalty</sup>

20h. The Lieutenant Governor in Council may make Regulations regulations,

- (a) providing for the issue, renewal, refusal to grant or renew, suspension and revocation of licences and prescribing additional conditions of licences;
- (b) prescribing the fee payable for a licence and for the renewal thereof;
- (c) prescribing the duties of veterinarians and inspectors for the purposes of the regulations under this Act;
- (d) respecting the conditions under which animals shall be kept or impounded;
- (e) prescribing the manner in which premises shall be cleaned and disinfected;
- (f) prescribing forms and providing for their use;
- (g) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

**2.** This Act comes into force on the day it receives Royal Assent. <sup>Commence-ment</sup>

**3.** This Act may be cited as *The Pounds Amendment Act*, <sup>Short title</sup> 1968-69.





An Act to amend The Pounds Act

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*1st Reading*

December 6th, 1968

*2nd Reading*

*3rd Reading*

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MR. DEACON

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**BILL 29**

2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

**An Act respecting Impaired Drivers**

MR. SHULMAN

TORONTO

PRINTED AND PUBLISHED BY FRANK FOGG, QUEEN'S PRINTER

#### EXPLANATORY NOTE

This Bill contains the principles of a Bill passed by the Assembly and Senate of the State of California in 1966.

## BILL 29

1968-69

## An Act respecting Impaired Drivers

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

## 1. In this Act,

Interpre-  
tation

(a) "Board" means the Licence Suspension Appeal Board under *The Highway Traffic Act*; R.S.O. 1960,  
c. 172

(b) "Registrar" means the Registrar of Motor Vehicles under *The Highway Traffic Act*.

2.—(1) Any person under arrest for any offence against any law in force in Ontario that was allegedly committed while he was driving a motor vehicle upon a highway while under the influence of intoxicating liquor shall be deemed to have given his consent to a chemical test of his blood, breath or urine for the purpose of determining the alcoholic content of his blood. Consent to  
test deemed  
to have  
been given

(2) The test shall be administered at the direction of the arresting officer if he has reasonable cause to believe that the person was driving a motor vehicle upon a highway while under the influence of intoxicating liquor. Admin-  
istration  
of test

(3) The arresting officer shall tell the person that his failure to submit to the test will result in the suspension of his operator's licence or his chauffeur's licence, as the case may be, for a period of six months. Warning

(4) The arresting officer shall tell the person that he has a choice as to whether the test will be of his blood, breath or urine. Choice  
of test

(5) Where the person has died or is unconscious or otherwise is in a condition that renders him incapable of refusing to submit to the test, he shall be deemed not to have withdrawn his consent and the test may be administered whether or not subsections 3 and 4 have been complied with. Where  
subss. 3, 4  
need not be  
complied  
with



Penalty for  
refusing  
test

**3.—**(1) If a person referred to in section 2 refuses the arresting officer's request to submit to a test under this Act, the Registrar, upon receipt of the officer's sworn statement that he had reasonable cause to believe,

(a) that the person had been driving a motor vehicle upon a highway while under the influence of intoxicating liquor; and

(b) that the person had refused to submit to a test under this Act after being requested so to do by the officer,

shall suspend the person's operator's licence or chauffeur's licence, as the case may be, for a period of six months.

When  
suspension  
to take  
effect

(2) No such suspension becomes effective until ten days after the giving of the notice of suspension provided for in subsection 3.

Notice of  
suspension

(3) The Registrar shall immediately notify in writing the person whose licence has been suspended of the action taken.

Appeal

(4) Every person who feels himself aggrieved by the suspension of his licence under this Act may appeal to the Board.

Scope of  
appeal

(5) On an appeal under this Act the Board shall receive all evidence submitted by or on behalf of the person aggrieved and the arresting officer that it considers relevant to the issue of whether the suspension of the licence was proper having regard to this Act and all the circumstances of the case.

Procedure  
R.S.O. 1960,  
c. 172

(6) On an appeal under this Act the provisions of *The Highway Traffic Act* and the regulations thereunder respecting appeals to the Board, except as varied by this Act, apply, including the further right of appeal to a judge of the county or district court of the county or district in which the person whose licence was suspended resides.

Request  
for test

**4.** Any person under arrest for any offence against any law in force in Ontario that was allegedly committed while he was driving a motor vehicle on a highway while under the influence of intoxicating liquor may request the arresting officer to have a chemical test made of the arrested person's blood, breath or urine for the purpose of determining the alcoholic content of the arrested person's blood, and, if so requested, the arresting officer shall direct the test to be made.

Additional  
test

**5.—**(1) Where a test under this Act is administered at the direction of the arresting officer, the person tested may, in addition to such test and at his own expense, have a

chemical test of his blood, breath or urine administered by a person of his own choosing for the purpose of determining, independently of the first test, the alcoholic content of his blood.

(2) The failure or inability to obtain an additional test<sup>First test not affected</sup> under this section does not affect the admissibility in evidence of the test administered at the direction of the arresting officer.

**6.—**(1) Only a duly qualified medical practitioner or a<sup>Who may withdraw blood</sup> registered nurse may withdraw blood from a person for a test under this Act.

(2) No duly qualified medical practitioner or registered<sup>Where no liability</sup> nurse shall incur any civil or criminal liability as a result of the proper withdrawal of blood from a person for a test under this Act if the withdrawal was requested in writing by the arresting officer.

**7.** Where a test under this Act is of urine, the person<sup>Privacy</sup> tested shall be afforded such privacy in the taking of the specimen of urine as will ensure the accuracy of the test and the dignity of the person tested.

**8.** Upon the request of a person tested under this Act,<sup>Test information to be made available</sup> full information concerning the test administered at the direction of the arresting officer shall be made available to the person or his representative.

**9.** Any person,<sup>Exemptions</sup>

(a) who is afflicted with hemophilia; or

(b) who is afflicted with a heart condition and is using an anticoagulant under the direction of a duly qualified medical practitioner,

is exempt from a test of his blood under this Act.

**10.** This Act may be cited as *The Blood-Alcohol Test Act*,<sup>Short title</sup> 1968-69.





Act Act respecting Impaired Drivers

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*1st Reading*

December 6th, 1968

*2nd Reading*

*3rd Reading*

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MR. SHULMAN

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**BILL 30**

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

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**An Act to amend The Highway Traffic Act**

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MR. YOUNG

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#### EXPLANATORY NOTE

The purpose of the Bill is to provide a system for inspecting motor vehicles for mechanical safety and for enforcing safety standards.



BILL 30

1968-69

## An Act to amend The Highway Traffic Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. *The Highway Traffic Act* is amended by adding thereto the following section: R.S.O. 1960,  
c. 172  
amended

49a.—(1) No person shall operate a motor vehicle, other than a public vehicle or public commercial vehicle, on the highway unless, within the preceding six-month period, it has been inspected by an inspector and certified by him in accordance with this section as free from mechanical, structural or other defect that would render the vehicle unsafe for use on the highway. Safety  
inspections

(2) The Lieutenant Governor in Council may appoint mechanics holding subsisting certificates of qualification under *The Apprenticeship and Tradesmen's Qualification Act, 1964*, as inspectors for the purposes of this section. Inspectors  
1964, c. 3

(3) The certificate of an inspector under subsection 1 shall be endorsed on the motor vehicle permit for the vehicle. Certificates

(4) A motor vehicle permit shall not be issued in respect of a motor vehicle for which a permit has been previously issued unless a certificate has been given under this section within six months before the new permit is issued. Renewal  
of permits

(5) The Lieutenant Governor in Council may make regulations requiring the payment of inspection fees and prescribing the amounts thereof. Inspection  
fees

- Offence** (6) Every person who operates a motor vehicle on the highway in contravention of subsection 1 and every owner of a motor vehicle who permits the vehicle to be so operated is guilty of an offence and is liable to a fine of not more than \$500.
- Commence-  
ment** **2.** This Act comes into force on the 1st day of March, 1970.
- Short title** **3.** This Act may be cited as *The Highway Traffic Amendment Act, 1968-69*.







An Act to amend The Highway Traffic Act

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*1st Reading*

December 9th, 1968

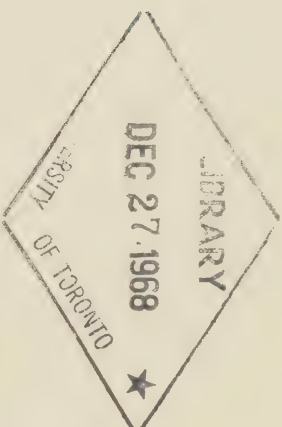
*2nd Reading*

*3rd Reading*

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MR. YOUNG

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**BILL 31**

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

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**An Act to amend The Ontario Society for the Prevention  
of Cruelty to Animals Act, 1955**

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MR. SHULMAN

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#### EXPLANATORY NOTE

The amendment delegates to the S.P.C.A. the licensing and regulating of dog kennels.

## BILL 31

1968-69

**An Act to amend The Ontario Society for the  
Prevention of Cruelty to Animals Act, 1955**

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** Section 7 of *The Ontario Society for the Prevention of Cruelty to Animals Act, 1955* is amended by adding thereto<sup>1955, c. 58, s. 7,</sup> amended the following subsections:

- (1a) Without restricting the generality of subsection 1,<sup>Regulation of kennels</sup> the Society may pass by-laws,
- (a) requiring and providing for the licensing of kennels and prescribing the terms and conditions of licences;
  - (b) prescribing the standards for the accommodation, facilities and operation of kennels including the care of dogs therein;
  - (c) requiring the payment of fees for licences and prescribing the amount thereof.

. . . . .

- (4) In this section, "kennel" means any premises where<sup>"kennel" defined</sup> dogs are kept for the purposes of boarding, breeding or sale for gain.

**2.** This Act comes into force on the day it receives Royal<sup>Commence-</sup> Assent.<sup>ment</sup>

**3.** This Act may be cited as *The Ontario Society for the Prevention of Cruelty to Animals Amendment Act, 1968-69*.<sup>Short title</sup>

An Act to amend The Ontario Society for  
the Prevention of Cruelty to Animals Act,  
1955

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*1st Reading*

December 9th, 1968

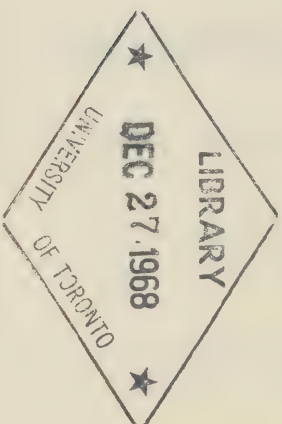
*2nd Reading*

*3rd Reading*

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MR. SHULMAN

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**BILL 32**

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

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**An Act to amend The Employment Standards Act, 1968**

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MR. DAVISON

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#### EXPLANATORY NOTE

The Bill increases the basic rate for minimum wages from \$1.30 an hour to \$2.25 an hour.

BILL 32

1968-69

## An Act to amend The Employment Standards Act, 1968

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Part IV of *The Employment Standards Act, 1968* is <sup>1968, c. 35</sup> amended by re-numbering section 15 as 15a and by adding <sup>Part IV</sup> thereto the following section:

15.—(1) Subject to subsection 5, every employer shall <sup>Minimum Wage</sup> pay to each of his employees wages at a rate of not less than \$2.25 an hour.

(2) Where an employee receives meals or living accom- <sup>Meals and living accommo-</sup>modation, or both, as part of his wages, the amount of the wages referable to the meals or living accom-  
modation shall not exceed,

(a) in the case of living accommodation, \$5 a week;

(b) in the case of meals, 60 cents each but not more than a total of \$12 a week; and

(c) in the case of both living accommodation and meals, \$17 a week.

(3) No amount shall be computed in respect of a meal or <sup>Idem</sup> living accommodation for the purpose of determining the wage paid unless the meal was actually received or the living accommodation was actually occupied by the employee.

(4) In determining the wage paid, no amount shall be <sup>Other services</sup> computed in respect of the supplying, use or laundering by the employer of uniforms, aprons, caps or other apparel.

Application  
of section

- (5) This section does not apply to any class or classes of employees designated for the purpose by the regulations.

1968,  
c. 35, s. 29,  
subs. 1, cl. a,  
re-enacted

**2.** Clause *a* of subsection 1 of section 29 of *The Employment Standards Act, 1968* is repealed and the following substituted therefor:

- (a) designating classes of employees to which section 15 does not apply and establishing minimum rates of wages of such classes.

Short title

**3.** This Act may be cited as *The Employment Standards Amendment Act, 1968-69*.









An Act to amend  
The Employment Standards Act, 1968

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*1st Reading*

December 10th, 1968

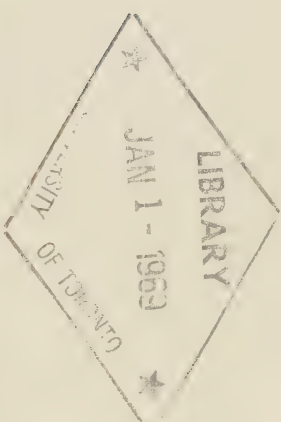
*2nd Reading*

*3rd Reading*

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MR. DAVISON

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**BILL 33**

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

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**An Act to amend The Highway Traffic Act**

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MR. SHULMAN

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#### EXPLANATORY NOTE

The purpose of the Bill is to establish three classes of chauffeur's licences related to the size and complexity of operation of the motor vehicle being driven. Provision is made for chauffeurs' learners' permits, and tests designed to reveal an applicant's driving ability are to be devised and administered. Existing chauffeurs' licences will expire when the Act comes into force, and exchanges of such licences for the ones of the new classes will be in accordance with terms and conditions to be prescribed.

BILL 33

1968-69

## An Act to amend The Highway Traffic Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Subsection 1 of section 16 of *The Highway Traffic Act* is repealed and the following substituted therefor: R.S.O. 1960, c. 172, s. 16, subs. 1, re-enacted

- (1) No person shall operate or drive a motor vehicle on a highway as a chauffeur unless he is the holder of a class of chauffeur's licence entitling him to drive such vehicle, and no person shall employ anyone to drive a motor vehicle who is not the holder of a class of chauffeur's licence entitling him to drive such vehicle. Chauffeur's licence

(2) Subsection 3 of the said section 16 is repealed and the following substituted therefor: R.S.O. 1960, c. 172, s. 16, subs. 3, re-enacted

- (3) Chauffeurs' licences shall be of three classes as follows: Classes of licence

1. Class 1—Entitling the holder thereof to drive as a chauffeur a private motor vehicle, taxicab, bus, truck-trailer combination, tractor-trailer combination or any truck.
2. Class 2—Entitling the holder thereof to drive as a chauffeur a private motor vehicle, taxicab, bus or any truck.
3. Class 3—Entitling the holder thereof to drive as a chauffeur a private motor vehicle, taxicab or any truck.

(3) The said section 16, as amended by section 1 of *The Highway Traffic Amendment Act, 1960-61* and section 6 of *The Highway Traffic Act Amendment Act, 1968*, is further amended by adding thereto the following subsections: R.S.O. 196, c. 172, s. 0, amended 16



When  
deemed  
driving  
without a  
licence

- (4) Where the holder of any class of chauffeur's licence drives or operates a motor vehicle on the highway other than of the type permitted by his class of licence, he shall be deemed to be driving or operating the motor vehicle without a licence.

Chauffeurs'  
learners'  
permits

- (5) Notwithstanding the provisions of subsection 1, any person who desires to qualify for a chauffeur's licence of any of the classes prescribed by subsection 3, may drive or operate a motor vehicle as a chauffeur for a period of six months from the date of issuance to him of a chauffeur's learner's permit, in accordance with the terms of such permit.

Learners  
to drive  
under  
supervision

- (6) The holder of a chauffeur's learner's permit shall not drive a motor vehicle as a chauffeur except under the immediate supervision and control of a chauffeur who holds a licence of the class permitting him to drive such vehicle, and where the holder of a chauffeur's learner's permit drives a motor vehicle in contravention of this subsection he shall be deemed to be driving or operating the motor vehicle without a licence.

Exchange of  
subsisting  
chauffeurs'  
licences

- (7) The holder of a chauffeur's licence or an operator's licence issued prior to the day this Act comes into force may exchange such licence for a chauffeur's licence of any one of the classes prescribed by subsection 3 on such terms and conditions as the Lieutenant Governor in Council may prescribe.

Tests for  
licence

- (7a) The Minister shall devise, revise from time to time as appropriate, and administer tests for persons applying for chauffeurs' learners' permits and each of the several classes of chauffeurs' licences prescribed by subsection 3.

Evidence  
of driving  
ability

- (7b) The tests mentioned in subsection 7a shall be designed to furnish the Minister with evidence as to the ability of an applicant to drive safely the class or classes of motor vehicle involved.

Terms of  
licence

- (7c) Subject to satisfactory performance on the tests mentioned in subsection 7a, chauffeurs' learners' permits and chauffeurs' licences of any of the classes prescribed by subsection 3 may be issued by the Minister to such persons for such time and upon such terms and subject to such regulations and restrictions as the Lieutenant Governor in Council may prescribe.

(7d) Notwithstanding the date of expiry appearing on any chauffeur's licence issued prior to the day this Act comes into force, all such chauffeurs' licences expire on the day this Act comes into force.

**2.** This Act comes into force on a day to be named by the Lieutenant Governor by his proclamation.

**3.** This Act may be cited as *The Highway Traffic Amendment Act, 1968-69*.





An Act to amend The Highway Traffic Act

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*1st Reading*

December 10th, 1968

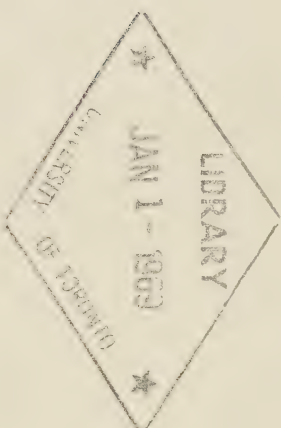
*2nd Reading*

*3rd Reading*

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MR. SHULMAN

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**BILL 34**

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

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**An Act to amend The Consumer Protection Act, 1966**

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MR. PATERSON

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#### EXPLANATORY NOTE

The amendment requires the publication of the names and addresses of contest winners.



BILL 34

1968-69

**An Act to amend  
The Consumer Protection Act, 1966**

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** *The Consumer Protection Act, 1966* is amended by adding <sup>1966, c. 23, amended</sup> thereto the following section:

31a.—(1) Any person who invites the public to enter a <sup>Contests</sup> contest or competition for which any prize, reward or advantage is offered shall, as soon as is practicable after the completion of the contest, publish or broadcast the name and address of each person who received any such prize, reward or advantage.

(2) The publication or broadcast required by subsection <sup>Publication of winners</sup> 1 shall be made,

(a) in the same medium and to the same territorial extent as that in which the invitation was extended; or

(b) by publication in one or more newspapers having general circulation in all parts of the area in which the invitation was extended.

(3) Any person who contravenes this section is guilty <sup>Penalty</sup> of an offence and upon summary conviction is liable to a fine not exceeding \$1,000 or, where the person is a corporation, to a fine not exceeding \$10,000.

**2.** This Act comes into force on the day it receives Royal <sup>Commence-  
ment</sup> Assent.

**3.** This Act may be cited as *The Consumer Protection* <sup>Short title</sup> *Amendment Act, 1968-69.*

An Act to amend  
The Consumer Protection Act, 1966

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*1st Reading*

December 11th, 1968

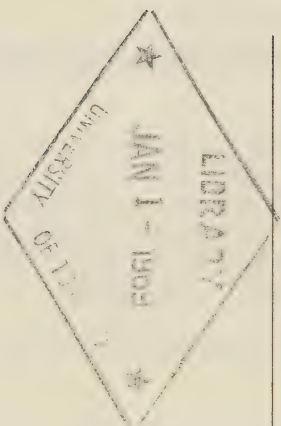
*2nd Reading*

*3rd Reading*

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MR. PATERSON

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**BILL 35**

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

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**An Act to amend The Highway Traffic Act**

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MR. SHULMAN

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#### EXPLANATORY NOTE

The Bill makes it an offence for the driver of a motor vehicle to fail to stop when given a clear signal to do so by a uniformed constable or police officer driving a plainly marked police vehicle.

BILL 35

1968-69

## An Act to amend The Highway Traffic Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. *The Highway Traffic Act* is amended by adding thereto the following section: R.S.O. 1960,  
c. 172,  
amended

156a.—(1) Every driver of a motor vehicle when given by <sup>Duty of driver when</sup> means of hand, voice, siren or emergency light an <sup>signalled</sup> audible or visual signal to stop by a constable or <sup>to stop</sup> officer in a police vehicle, shall bring his vehicle to a stop and shall not otherwise flee or attempt to elude the police vehicle provided,

(a) the police vehicle is plainly marked as such; and

(b) the constable or officer is in uniform with his badge of office prominently displayed thereon.

(2) Every person who contravenes the provisions of <sup>Penalty</sup> subsection 1 is liable to a fine of not less than \$100 and not more than \$500, or to imprisonment for a term of not less than thirty days and not more than six months, or to both such fine and imprisonment.

2. This Act comes into force on the day it receives Royal <sup>Commence-</sup> Assent. <sup>ment</sup>

3. This Act may be cited as *The Highway Traffic Amend-* <sup>Short title</sup> *ment Act, 1968-69.*

An Act to amend The Highway Traffic Act

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*1st Reading*

December 11th, 1968

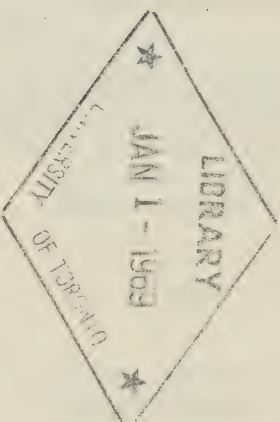
*2nd Reading*

*3rd Reading*

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MR. SHULMAN

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## BILL 36

56

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

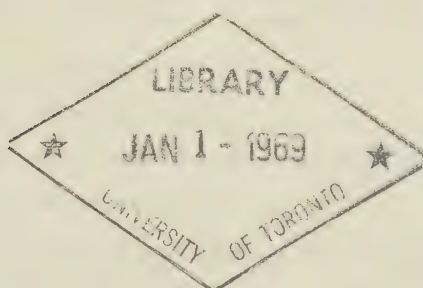
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**The Mechanics' Lien Act, 1968-69**

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MR. WISHART

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## EXPLANATORY NOTES

GENERAL. In 1965 the Ontario Law Reform Commission undertook an extensive study of the law in Ontario on mechanics' liens.

A report dated February 22, 1966, was made by the Commission to the Attorney General containing its recommendations for up-dating *The Mechanics' Lien Act*.

Bill 190, based upon the report, was introduced and given first reading at the 1966 Session. This gave the proposed legislation wide distribution in convenient form for study by interested persons and organizations.

The Commission then held public hearings and considered many submissions which resulted in a supplementary report dated May 26, 1967.

The recommendations of the Commission contained in the supplementary report have been incorporated in this Bill. There is, however, one major exception. This Bill does not transfer jurisdiction in mechanics' lien actions from the Supreme Court to the county and district courts as recommended by the Commission in both of its reports. It is thought advisable to leave this matter in abeyance pending the conclusion of the general review of the jurisdictions of the several court systems in Ontario now going on as a result of the recommendations of the McRuer Report.

This Bill also contains a number of editorial and other changes, designed to clarify the intent, that have resulted from the study of Bill 190.

In the following notes the supplementary report of the Commission is referred to as O.L.R.C. Supp. Rep.



### The Mechanics' Lien Act, 1968-69

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Interpre-  
tation

- (a) "completion of the contract" means substantial performance, not necessarily total performance, of the contract;
- (b) "contractor" means a person contracting with or employed directly by the owner or his agent for the doing of work or the placing or furnishing of materials for any of the purposes mentioned in this Act;
- (c) "materials" includes every kind of movable property;
- (d) "owner" includes any person and corporation, including a municipal corporation and a railway company, having any estate or interest in the land upon which or in respect of which work is done or materials are placed or furnished, at whose request, and
  - (i) upon whose credit, or
  - (ii) on whose behalf, or
  - (iii) with whose privity or consent, or
  - (iv) for whose direct benefit,
 work is done or materials are placed or furnished and all persons claiming under him or it whose rights are acquired after the work in respect of which the lien is claimed is commenced or the materials placed or furnished have been commenced to be placed or furnished;
- (e) "registrar" includes a master of titles;
- (f) "registry office" includes a land titles office;

- (g) “subcontractor” means a person not contracting with or employed directly by the owner or his agent for any of the purposes mentioned in this Act, but contracting with or employed by a contractor or, under him, by another subcontractor;
- (h) “wages” means the money earned by a workman for work done by time or as piece work, and includes all monetary supplementary benefits, whether statutory or contractual;
- (i) “workman” means a person employed for wages in any kind of labour, whether employed under a contract of service or not. R.S.O. 1960, c. 233, s. 1, *amended*.

Work  
includes  
service

(2) In this Act, the expression “the doing of work” includes the performance of a service, and corresponding expressions have corresponding meanings.

Substantial  
performance

(3) For the purposes of this Act, a contract shall be deemed to be substantially performed,

- (a) when the work or a substantial part thereof is ready for use or is being used for the purpose intended; and
- (b) when the work to be done under the contract is capable of completion or correction at a cost of not more than,
  - (i) 3 per cent of the first \$250,000 of the contract price,
  - (ii) 2 per cent of the next \$250,000 of the contract price, and
  - (iii) 1 per cent of the balance of the contract price,

and in the event that the work cannot be completed expeditiously for reasons beyond the control of the contractor, the value of the work shall be deducted from the contract price for the purpose of determining substantial performance. *New.*

#### GENERAL

Exception  
of streets  
or highways

**2.** Nothing in this Act extends to any public street or highway, or to any work or improvement done or caused to be done by a municipal corporation thereon, except that the

SECTION 1—Subsection 3. This provision is new. It is designed to complement the definition of “completion of the contract” and thus speed up the release of “holdback” moneys.

SECTION 2. The intent of the original recommendation of the Ontario Law Reform Commission is clarified. The “holdback” provisions are not intended to apply where the work is being done by a municipality or its contractor. See O.L.R.C. Supp. Rep., pp. 4, 5.

SECTION 3—Subsection 3. The purpose of this new subsection is to extend the trust concept so that not only the sums received under subsection 1 by the builder, contractor or subcontractor would constitute trust funds but also the sums certified as owing because the latter sums represent the value of work already done by the contractor and subcontractors.

provisions of section 11 as to the retention and payment of percentages by the owner apply *mutatis mutandis* to any such work or improvement that is done or made by a person other than a municipal corporation or its contractor. R.S.O. 1960, c. 233, s. 2, *amended*.

3.—(1) All sums received by a builder, contractor or sub-<sup>Trust funds</sup>contractor on account of the contract price constitute a trust fund in his hands for the benefit of the owner, builder, contractor, subcontractor, Workmen's Compensation Board, workmen, and persons who have supplied materials on account of the contract or who have rented equipment to be used on the contract site, and the builder, contractor or subcontractor, as the case may be, is the trustee of all such sums so received by him and he shall not appropriate or convert any part thereof to his own use or to any use not authorized by the trust until all workmen and all persons who have supplied materials on the contract or who have rented equipment to be used on the contract site and all subcontractors are paid for work done or materials supplied on the contract and the Workmen's Compensation Board is paid any assessment with respect thereto. R.S.O. 1960, c. 233, s. 3 (1), *amended*.

(2) Notwithstanding subsection 1, where a builder, con-<sup>Exception</sup>tractor or subcontractor has paid in whole or in part for any materials supplied on account of the contract or for any rented equipment or has paid any workman who has performed any work or any subcontractor who has placed or furnished any materials in respect of the contract, the retention by such builder, contractor or subcontractor of a sum equal to the sum so paid by him shall be deemed not to be an appropriation or conversion thereof to his own use or to any use not authorized by the trust. R.S.O. 1960, c. 233, s. 3 (3), *amended*.

(3) Where sums become payable under a contract to a<sup>Trust funds</sup> contractor by an owner on the certificate of a person authorized under the contract to make such a certificate, all sums so certified shall, until paid to the contractor, constitute a trust fund in the hands of the owner for the benefit of the contractor, subcontractor, Workmen's Compensation Board, workmen, and persons who have supplied materials on account of the contract or who have rented equipment to be used on the contract site, and the owner is the trustee of all such sums so certified and he shall not appropriate or convert any part thereof to his own use or to any use not authorized by the trust until all workmen and all persons who have supplied materials on the contract or who have rented equipment to be used on the contract site and all contractors and subcontractors are paid for work done or materials supplied on the contract and the Workmen's Compensation Board is paid any assessment with respect thereto.

Advances on  
mortgage,  
etc., a trust  
fund  
R.S.O. 1960,  
c. 98

(4) All sums received by an owner, other than a municipality as defined in *The Department of Municipal Affairs Act*, which are to be used in the financing, including the purchase price of the land and the payment of prior encumbrances, of a building, structure or work, constitute, subject to the payment of the purchase price of the land and prior encumbrances, a trust fund in the hands of the owner for the benefit of the persons mentioned in subsection 1, and, until the claims of all such persons have been paid, the owner shall not appropriate or convert any part thereof to his own use or to any use not authorized by the trust.

Exception

(5) Notwithstanding subsection 4, where an owner has himself paid in whole or in part for any work done, for any materials placed or furnished or for any rented equipment, the retention by him from any moneys received from the lender under subsection 4 of a sum equal to the sum so paid by him shall be deemed not to be an appropriation or conversion thereof to his own use or to any use not authorized by the trust.

Protection  
for money  
lenders

(6) Notwithstanding anything in this section, where money is lent to a person upon whom a trust is imposed by this section and is used by him to pay in whole or in part a lien claimant, the trustee may use trust moneys to discharge the loan to the extent that the lender's money was used to pay the lien claimant, and any sum so paid to the lender shall be deemed not to be an appropriation or conversion to the trustee's own use or to any use not authorized by the trust. *New.*

Offence and  
penalty

(7) Every person upon whom a trust is imposed by this section who knowingly appropriates or converts any part of any trust moneys referred to in subsection 1, 3 or 4 to his own use or to any use not authorized by the trust is guilty of an offence and on summary conviction is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than two years, or to both, and every director or officer of a corporation who knowingly assents to or acquiesces in any such offence by the corporation is guilty of such offence, in addition to the corporation, and on summary conviction is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than two years, or to both. R.S.O. 1960, c. 233, s. 3 (2), *amended*.

Agreements  
waiving  
application  
of Act  
are void

4.—(1) Every agreement, oral or written, express or implied, on the part of any workman that this Act does not apply to him or that the remedies provided by it are not available for his benefit is void.



Subsection 4. Municipal financing is expressly excluded from the scope of the provision and its intent is clarified as recommended in O.L.R.C. Supp. Rep., pp. 6, 7.

Subsection 5. This extension of the "trustee provisions" is new. It is recommended in O.L.R.C. Supp. Rep., pp. 5-7.

Subsection 6. This subsection is changed in order to bring it into line with the original recommendation of the Ontario Law Reform Commission. This is discussed in O.L.R.C. Supp. Rep., p. 7.

SECTION 4—Subsection 2, clause *b*. In its original report the Ontario Law Reform Commission recommended “\$25 a day” which is the sum that appeared in Bill 190.

As a result of further submissions and consideration, the Commission recommends \$35 a day. See O.L.R.C. Supp. Rep., p. 7.

SECTION 5—Subsection 4. The intent of the original recommendation of the Ontario Law Reform Commission is clarified. It is intended that the lien for rented equipment is for an amount that is reasonable and justly due in the particular circumstances. See O.L.R.C. Supp. Rep., p. 8.



(2) Subsection 1 does not apply,

Exception

(a) to a manager, officer or foreman; or

(b) to any person whose wages are more than \$35 a day.

(3) No agreement deprives any person otherwise entitled to a lien under this Act, who is not a party to the agreement, of the benefit of the lien, but it attaches, notwithstanding such agreement. R.S.O. 1960, c. 233, s. 4, *amended*.

Effect upon  
third party  
of agreement  
waiving lien

#### CREATION OF LIENS

5.—(1) Unless he signs an express agreement to the contrary and in that case subject to section 4, any person who does any work upon or in respect of, or places or furnishes any materials to be used in, the making, constructing, erecting, fitting, altering, improving or repairing of any land, building, structure or works or the appurtenances to any of them for any owner, contractor or subcontractor by virtue thereof has a lien for the price of the work or materials upon the estate or interest of the owner in the land, building, structure or works and appurtenances and the land occupied thereby or enjoyed therewith, or upon or in respect of which the work is done, or upon which the materials are placed or furnished to be used, limited, however, in amount to the sum justly due to the person entitled to the lien and to the sum justly owing, except as herein provided, by the owner, and the placing or furnishing of the materials to be used upon the land or such other place in the immediate vicinity of the land designated by the owner or his agent is good and sufficient delivery for the purpose of this Act, but delivery on the designated land does not make such land subject to a lien.

General  
right to a  
lien

(2) The lien given by subsection 1 attaches as therein set out where the materials delivered to be used are incorporated into the land, building, structure or works, notwithstanding that the materials may not have been delivered in strict accordance with subsection 1.

Lien  
attaches  
where  
materials  
incorporated  
into  
building

(3) In subsection 1, "agent" includes the contractor or subcontractor for whom the materials are placed or furnished, unless the person placing or furnishing the materials has had actual notice from the owner to the contrary. R.S.O. 1960, c. 233, s. 5, *amended*.

Interpre-  
tation

(4) A person who rents equipment to an owner, contractor or subcontractor for use on a contract site shall be deemed for the purposes of this Act to have performed a service for which he has a lien for the price of the rental of the equipment

Lien for  
rented  
equipment

used on the contract site, limited, however in amount to the sum justly owed and due to the person entitled to the lien from the owner, contractor or subcontractor in respect of the rental of the equipment. *New.*

When husband's interest liable for work done or materials furnished on land of spouse

6. Where work is done or materials are placed or furnished to be used upon or in respect of the land of a married woman, or in which she has an interest or an inchoate right of dower, with the privity or consent of her husband, he shall be presumed conclusively to be acting as her agent as well as for himself for the purposes of this Act unless before doing the work or placing or furnishing the materials the person doing the work or placing or furnishing the materials has had actual notice to the contrary. R.S.O. 1960, c. 233, s. 6, *amended.*

Where estate charged is leasehold

7.—(1) Where the estate or interest upon which the lien attaches is leasehold, the fee simple is also subject to the lien if the person doing the work or placing or furnishing the materials gives notice in writing, by personal service, to the owner in fee simple or his agent of the work to be done or materials to be placed or furnished unless the owner in fee simple or his agent within fifteen days thereafter gives notice in writing, by personal service, to such person that he will not be responsible therefor.

Forfeiture or cancellation of lease, effect of on lienholder

(2) No forfeiture or attempted forfeiture of the lease on the part of the landlord, or cancellation or attempted cancellation of the lease except for non-payment of rent, deprives any person otherwise entitled to a lien of the benefit of the lien, but the person entitled to the lien may pay any rent accruing after he becomes so entitled, and the amount so paid may be added to his claim.

Prior mortgages

(3) Where the land and premises upon or in respect of which any work is done or materials are placed or furnished are encumbered by a mortgage or other charge that was registered in the proper registry office before any lien under this Act arose, the mortgage or other charge has priority over all liens under this Act to the extent of the actual value of the land and premises at the time the first lien arose, such value to be ascertained by the judge or officer having jurisdiction to try an action under this Act.

When first lien arose

(4) The time at which the first lien arose shall be deemed to be the time at which the first work was done or the first materials placed or furnished, irrespective of whether a claim for lien in respect thereof is registered or enforced and whether or not such lien is before the court. R.S.O. 1960, c. 233, s. 7 (1-4), *amended.*

SECTION 7—Subsection 1. The intent is clarified. See O.L.R.C. Supp. Rep., p. 8. Also, the notice period is increased from ten to fifteen days.



(5) Any mortgage existing as a valid security, notwithstanding that it is a prior mortgage within the meaning of subsection 3, may also secure future advances, subject to subsection 1 of section 14. R.S.O. 1960, c. 233, s. 7 (5).

(6) A registered agreement for the sale and purchase of land and any moneys *bona fide* secured or payable thereunder has the same priority over a lien as is provided for a mortgage and mortgage moneys in subsections 3 and 5, and for the purposes of this Act the seller shall be deemed to be a mortgagee, and any moneys *bona fide* secured and payable under such agreement shall be deemed to be mortgage moneys *bona fide* secured or advanced. R.S.O. 1960, c. 233, s. 7 (6), amended.

8. Where any of the property upon which a lien attaches is wholly or partly destroyed by fire, any money received by reason of any insurance thereon by an owner or prior mortgagee or chargee shall take the place of the property so destroyed and is, after satisfying any prior mortgage or charge in the manner and to the extent set out in subsection 3 of section 7, subject to the claims of all persons for liens to the same extent as if the money had been realized by a sale of the property in an action to enforce the lien. R.S.O. 1960, c. 233, s. 8.

9. Save as herein otherwise provided, the lien does not attach so as to make the owner liable for a greater sum than the sum payable by the owner to the contractor. R.S.O. 1960, c. 233, s. 9.

10. Save as herein otherwise provided, where the lien is claimed by any person other than the contractor, the amount that may be claimed in respect thereof is limited to the amount owing to the contractor or subcontractor or other person for whom the work has been done or the materials were placed or furnished. R.S.O. 1960, c. 233, s. 10, amended.

11.—(1) In all cases, the person primarily liable upon a contract under or by virtue of which a lien may arise shall, as the work is done or the materials are furnished under the contract, retain for a period of thirty-seven days after the completion or abandonment of the work done or to be done under the contract 20 per cent of the value of the work and materials actually done, placed or furnished, as mentioned in section 5, irrespective of whether the contract or subcontract provides for partial payments or payment on completion of the work, and the value shall be calculated upon evidence given in that regard on the basis of the contract price or, if there is no specific contract price, on the basis of the actual value of the work or materials. R.S.O. 1960, c. 233, s. 11 (1), amended.



Idem,  
where con-  
tract price  
exceeds  
\$35,000

(2) Where the contract price or actual value exceeds \$35,000, 15 per cent instead of 20 per cent shall be retained. R.S.O. 1960, c. 233, s. 11 (2), *amended*.

Reduction  
in amount  
retained

(3) Where a contract is under the supervision of an architect, engineer or other person upon whose certificate payments are to be made and thirty-seven days have elapsed after a certificate issued by that architect, engineer or other person to the effect that the subcontract has been completed to his satisfaction has been given to the person primarily liable upon that contract and to the person who became a subcontractor by a subcontract made directly under that contract, the amount to be retained by the person primarily liable upon that contract shall be reduced by 15 per cent or 20 per cent, as the case may be, of the subcontract price or, if there is no specific subcontract price, by 15 per cent or 20 per cent, as the case may be, of the actual value of the work done or materials placed or furnished under that subcontract, but this subsection does not operate if and so long as any lien derived under that subcontract is preserved by anything done under this Act.

Idem

(4) Where a certificate issued by an architect, engineer or other person to the effect that a subcontract by which a subcontractor became a subcontractor has been completed to the satisfaction of that architect, engineer or other person has been given to that subcontractor, then for the purposes of subsections 1, 2 and 3 of section 21 and section 23 that subcontract and any materials placed or furnished or to be placed or furnished thereunder and any work done or to be done thereunder shall, so far as concerns any lien thereunder of that subcontractor, be deemed to have been completed or placed or furnished not later than the time at which the certificate was so given. R.S.O. 1960, c. 233, s. 11 (3, 4), *amended*.

Court order  
in lieu of  
certificate

(5) Where an architect, engineer or other person neglects or refuses to issue or deliver a certificate upon which payments are to be made under a contract to which subsection 3 applies, the judge or officer having jurisdiction to try an action under this Act, upon application and upon being satisfied that the certificate should have been issued and delivered, may make an order, upon such terms and conditions as to costs and otherwise as he deems just, that the contract has been completed, and any such order has the same force and effect as if the certificate had been issued and delivered by the architect, engineer or other person. *New*.

Effect of  
lien on  
amounts  
retained

(6) The lien is a charge upon the amount directed to be retained by this section in favour of lien claimants whose liens are derived under persons to whom the moneys so required to be retained are respectively payable.

SECTION 11—Subsection 2. The lien between 20 per cent and 15 per cent is increased from \$25,000 to \$35,000.

Subsections 5 and 10. The intent is clarified. See O.L.R.C. Supp. Rep., p. 8.





(7) All payments up to 80 per cent as fixed by subsection 1 or up to 85 per cent as fixed by subsection 2 and payments permitted as a result of the operation of subsections 3 and 4 made in good faith by an owner to a contractor, or by a contractor to a subcontractor, or by one subcontractor to another subcontractor, before notice in writing of the lien given by the person claiming the lien to the owner, contractor or subcontractor, as the case may be, operate as a discharge *pro tanto* of the lien. Payments made in good faith without notice of lien

(8) Payment of the percentage required to be retained under this section may be validly made so as to discharge all liens or charges in respect thereof after the expiration of the period of thirty-seven days mentioned in subsection 1 unless in the meantime proceedings have been commenced to enforce any lien or charge against the percentage as provided by sections 22 and 23, in which case the owner may pay the percentage into court in the proceedings, and such payment constitutes valid payment in discharge of the owner to the amount thereof. Payment of percentage and discharge of liens

(9) Every contract shall be deemed to be amended in so far as is necessary to be in conformity with this section. R.S.O. 1960, c. 233, s. 11 (5-9). Amendment of contracts

(10) Where the contractor or subcontractor makes default in completing his contract, the percentage required to be retained shall not, as against any lien claimant who by virtue of subsection 6 has a charge thereupon, be applied by the owner, contractor or subcontractor to the completion of the contract or for any other purpose nor to the payment of damages for the non-completion of the contract by the contractor or subcontractor nor in payment or satisfaction of any claim against the contractor or subcontractor. R.S.O. 1960, c. 233, s. 11 (9), *amended*. Where percentage not to be applied

**12.** If an owner, contractor or subcontractor makes a payment to any person entitled to a lien under section 5 for or on account of any debt, justly due to him for work done or for materials placed or furnished to be used as therein mentioned, for which he is not primarily liable, and within three days afterwards gives written notice of the payment to the person primarily liable, or his agent, the payment shall be deemed to be a payment on his contract generally to the contractor or subcontractor primarily liable but not so as to affect the percentage to be retained by the owner as provided by section 11. R.S.O. 1960, c. 233, s. 12 (1), *amended*. Payments made directly by owner to persons entitled to lien

**13.** Every subcontractor is entitled to enforce his lien notwithstanding the non-completion or abandonment of the contract by any contractor or subcontractor under whom he claims. R.S.O. 1960, c. 233, s. 12 (2). Rights of subcontractor

Priority of  
lien

**14.—**(1) The lien has priority over all judgments, executions, assignments, attachments, garnishments and receiving orders recovered, issued or made after the lien arises, and over all payments or advances made on account of any conveyance or mortgage after notice in writing of the lien has been given to the person making such payments or after registration of a claim for the lien as hereinafter provided, and, in the absence of such notice in writing or the registration of a claim for lien, all such payments or advances have priority over any such lien. R.S.O. 1960, c. 233, s. 13 (1), *amended*.

Priority  
among  
lienholders

(2) Except where it is otherwise provided by this Act, no person entitled to a lien on any property or money is entitled to any priority or preference over another person of the same class entitled to a lien on such property or money, and each class of lienholders ranks *pari passu* for their several amounts, and the proceeds of any sale shall be distributed among them *pro rata* according to their several classes and rights.

Mortgage  
given to  
person  
entitled to  
lien void as  
against lien-  
holders

(3) Any conveyance, mortgage or charge of or on land given to any person entitled to a lien thereon under this Act in payment of or as security for any such claim, whether given before or after such lien claim has arisen, shall, as against other parties entitled to liens under this Act, on any such land be deemed to be fraudulent and void. R.S.O. 1960, c. 233, s. 13 (2, 3).

#### PRIORITY OF WAGES

Priority of  
liens for  
wages

**15.—**(1) Every workman whose lien is for wages has priority to the extent of thirty days wages over all other liens derived through the same contractor or subcontractor to the extent of and on the 20 per cent or 15 per cent, as the case may be, directed to be retained by section 11 to which the contractor or subcontractor through whom the lien is derived is entitled, and all such workmen rank thereon *pari passu*.

Enforcing  
lien in  
such cases

(2) Every workman is entitled to enforce a lien in respect of any contract or subcontract that has not been completed and, notwithstanding anything to the contrary in this Act, may serve a notice of motion on the proper persons, returnable in four days after service thereof before the judge or officer having jurisdiction to try an action under this Act, that the applicant will on the return of the motion ask for judgment on his claim for lien, registered particulars of which shall accompany the notice of motion duly verified by affidavit.

Calculating  
percentage  
when con-  
tract not  
fulfilled

(3) If the contract has not been completed when the lien is claimed by a workman, the percentage shall be calculated on the value of the work done or materials placed or furnished by the contractor or subcontractor by whom the workman is employed, having regard to the contract price, if any.

(4) Every device by an owner, contractor or subcontractor to defeat the priority given to a workman for his wages and every payment made for the purpose of defeating or impairing a lien are void. R.S.O. 1960, c. 233, s. 14, *amended*. Devices to defeat priority of workmen

#### REGISTRATION

**16.**—(1) A claim for a lien may be registered in the proper registry office and shall set out, Registration of claim for lien

- (a) the name and an address for service of the person claiming the lien and of the owner or of the person whom the person claiming the lien, or his agent, believes to be the owner of the land, and of the person for whom the work was or is to be done, or the materials were or are to be placed or furnished, and the time within which the same was or was to be done or placed or furnished;
- (b) a short description of the work done or to be done, or the materials placed or furnished or to be placed or furnished;
- (c) the sum claimed as due or to become due;
- (d) a description of the land as required by *The Land Titles Act* or *The Registry Act* and the regulations thereunder, as the case may be; and R.S.O. 1960, cc. 204, 348
- (e) the date of expiry of the period of credit if credit has been given. R.S.O. 1960, c. 233, s. 16 (1), *amended*.

(2) The claim shall be verified in duplicate by the affidavit of the person claiming the lien, or of his agent or assignee who has a personal knowledge of the matters required to be verified, and the affidavit of the agent or assignee shall state that he has such knowledge. Verification of claim

(3) When it is desired to register a claim for lien against a railway, it is sufficient description of the land of the railway company to describe it as the land of the railway company, and every such claim shall be registered in the general register in the office for the registry division within which the lien is claimed to have arisen. R.S.O. 1960, c. 233, s. 16 (2, 3). Lien against railway

**17.**—(1) A claim for lien may include claims against any number of properties, and any number of persons claiming liens upon the same property may unite therein, but, where more than one lien is included in one claim, each claim for lien shall be verified by affidavit as provided in section 16. What may be included in claim



Apportion-  
ment of  
claims

(2) The judge or officer trying the action has jurisdiction equitably to apportion against the respective properties the amounts included in any claim or claims under subsection 1. R.S.O. 1960, c. 233, s. 17, *amended*.

Informality

**18.**—(1) Substantial compliance with sections 16, 17 and 29 is sufficient and no claim for lien is invalidated by reason of failure to comply with any of the requirements of such sections unless, in the opinion of the judge or officer trying the action, the owner, contractor or subcontractor, mortgagee or other person is prejudiced thereby, and then only to the extent to which he is thereby prejudiced.

Registration  
necessary

(2) Nothing in this section dispenses with the requirement of registration of the claim for lien. R.S.O. 1960, c. 233, s. 18, *amended*.

Duplicate to  
be filed

**19.** A duplicate of the claim for lien, bearing the registrar's certificate of registration, shall be filed on or before the trial of the action, where the action is to be tried in the County of York, in the office of the master of the Supreme Court, or, where the action is to be tried elsewhere, in the office of the clerk of the county or district court of the county or district in which the action is to be tried. R.S.O. 1960, c. 233, s. 19 (1), *amended*.

Status  
of lien  
claimant

R.S.O. 1960,  
cc. 348, 204

**20.** Where a claim is so registered, the person entitled to a lien shall be deemed to be a purchaser *pro tanto* and a purchaser within the provisions of *The Registry Act* and *The Land Titles Act*, but, except as herein otherwise provided, those Acts do not apply to any lien arising under this Act. R.S.O. 1960, c. 233, s. 20, *amended*.

Limit of  
time for  
registration

**21.**—(1) A claim for lien by a contractor or subcontractor in cases not otherwise provided for may be registered before or during the performance of the contract or of the subcontract or within thirty-seven days after the completion or abandonment of the contract or of the subcontract, as the case may be. R.S.O. 1960, c. 233, s. 21 (1).

Materials

(2) A claim for lien for materials may be registered before or during the placing or furnishing thereof, or within thirty-seven days after the placing or furnishing of the last material so placed or furnished. R.S.O. 1960, c. 233, s. 21 (2), *amended*.

Services

(3) A claim for lien for services may be registered at any time during the performance of the service or within thirty-seven days after the completion of the service. R.S.O. 1960, c. 233, s. 21 (3).

SECTION 21. As a result of further submissions and research, the O.L.R.C. Supp. Rep., p. 8, recommends that the "umbrella principle" of the Act, which appeared as subsection 5 of section 21 of Bill 190, be dropped. The result will be that all lien claimants must register their claims, thus greatly facilitating the trial of some mechanics' lien actions.

The requirement for registration of certificates of action is to be found in section 22 (2) of this Bill.

SECTION 25. A number of changes in language have been made in order to clarify the intent, especially subsection 6 as to notice. See O.L.R.C. Supp. Rep., p. 9.

(4) A claim for lien for wages may be registered at any time during the doing of the work for which the wages are claimed or within thirty-seven days after the last work was done for which the lien is claimed. R.S.O. 1960, c. 233, s. 21 (4), *amended*. Wages

#### EXPIRY AND DISCHARGE

**22.**—(1) Every lien for which a claim is not registered ceases to exist on the expiration of the time limited in section 21 for the registration thereof. Expiry of liens

(2) Upon an action under this Act being commenced, a certificate thereof shall be registered in the registry office in which the claim for lien is registered. R.S.O. 1960, c. 233, s. 22 (1), *part, amended*. Registration of certificate of action

(3) Where a certificate of action has been registered for two years or more in the registry office and no appointment has been taken out for the trial of the action, the judge or an officer having jurisdiction to try the action may, upon the application *ex parte* of any interested person, make an order vacating the certificate of action and discharging all liens depending thereon. R.S.O. 1960, c. 233, s. 22, *amended*. Vacating orders

**23.** Every lien for which a claim is registered ceases to exist on the expiration of ninety days after the work has been completed or the materials have been placed or furnished, or after the expiry of the period of credit, where such period is mentioned in the registered claim for lien, unless in the meantime an action is commenced to realize the claim or in which a subsisting claim may be realized, and a certificate is registered as provided by section 22. R.S.O. 1960, c. 233, s. 23, *amended*. When lien to cease if registered and not proceeded upon

**24.** The rights of a lien claimant may be assigned by an instrument in writing and, if not assigned, upon his death pass to his personal representative. R.S.O. 1960, c. 233, s. 24, *amended*. Assignment or death of lien claimant

**25.**—(1) A claim for lien may be discharged by the registration of a receipt acknowledging payment, Discharge of lien

(a) where made by a lien claimant that is not a corporation, signed by the lien claimant or his agent duly authorized in writing and verified by affidavit; or

(b) where made by a lien claimant that is a corporation, sealed with its corporate seal. R.S.O. 1960, c. 233, s. 25 (1), *amended*.

(2) Upon application, the judge or officer having jurisdiction to try the action may, at any time, Security or payment into court and vacating lien and certificate of action

- (a) allow security for or payment into court of the amount of the claim of the lien claimant and the amount of the claims of any other subsisting lien claimants together with such costs as he may fix, and thereupon order that the registration of the claim for lien or liens and the registration of the certificate of action, if any, be vacated;
- (b) upon any other proper ground, order that the registration of the claim for lien or liens and the registration of the certificate of action, if any, be vacated; or
- (c) upon proper grounds, dismiss the action. R.S.O. 1960, c. 233, s. 25 (4), *amended*.

Effect of  
order under  
subs. 2,  
cls. a or b

(3) Notwithstanding sections 22 and 23, where an order to vacate the registration of a lien is made under clause a or b of subsection 2, the lien does not cease to exist for the reason that no certificate of action is registered.

Money paid  
into court

(4) Any money so paid into court, or any bond or other security for securing the like amount and satisfactory to the judge or officer, takes the place of the property discharged and is subject to the claims of every person who has at the time of the application a subsisting claim for lien or given notice of the claim under subsection 7 of section 11 or section 14 to the same extent as if the money, bond or other security was realized by a sale of the property in an action to enforce the lien, but such amount as the judge or officer finds to be owing to the person whose lien has been so vacated is a first charge upon the money, bond or other security.

Where notice  
of applica-  
tion to  
vacate not  
requisite

(5) Where the certificate required by section 22 or 23 has not been registered within the prescribed time and an application is made to vacate the registration of a claim for lien after the time for registration of the certificate, the order vacating the lien may be made *ex parte* upon production of a certificate of search under *The Land Titles Act* or of a registrar's abstract under *The Registry Act*, as the case may be, together with a certified copy of the registered claim for lien. R.S.O. 1960, c. 233, s. 25 (5-7), *amended*.

R.S.O. 1960,  
cc. 204, 348

Payment of  
money out  
of court

(6) Where money has been paid into court or a bond deposited in court pursuant to an order under subsection 2, the judge or officer may, upon such notice to the parties as he may require, order the money to be paid out to the persons entitled thereto or the delivery up of the bond for cancellation, as the case may be. 1961-62, c. 78, s. 1, *amended*.

Registration  
number

(7) An order discharging a claim for lien or vacating a certificate of action shall be registered by registering the order or a certificate thereof, under the seal of the court, that



includes a description of the land as required by *The Land Titles Act* or *The Registry Act* and the regulations thereunder, as the case may be, and a reference to the registration number of every registered claim for lien and certificate of action affected thereby. 1966, c. 84, s. 1, *amended*. R.S.O. 1960,  
cc. 204, 348

#### EFFECT OF TAKING SECURITY OR EXTENDING TIME

**26.**—(1) The taking of any security for, or the acceptance of any promissory note or bill of exchange for, or the taking of any acknowledgment of the claim, or the giving of time for the payment thereof, or the taking of any proceedings for the recovery, or the recovery of a personal judgment for the claim, does not merge, waive, pay, satisfy, prejudice or destroy the lien unless the lien claimant agrees in writing that it has that effect. R.S.O. 1960, c. 233, s. 26 (1). Effect  
generally

(2) Where any such promissory note or bill of exchange has been negotiated, the lien claimant does not thereby lose his right to claim for lien if, at the time of bringing his action to enforce it or where an action is brought by another lien claimant, he is, at the time of proving his claim in the action, the holder of such promissory note or bill of exchange. Where  
period  
of credit  
not expired

(3) Nothing in subsection 2 extends the time limited by this Act for bringing an action to enforce a claim for lien. Time for  
bringing  
action not  
extended

(4) A person who has extended the time for payment of a claim for which he has a claim for lien in order to obtain the benefit of this section shall commence an action to enforce the claim within the time prescribed by this Act and shall register a certificate as required by sections 22 and 23, but no further proceedings shall be taken in the action until the expiration of such extension of time. R.S.O. 1960, c. 233, s. 26 (2-4), *amended*. Time for  
bringing  
action by  
person who  
gave time  
for payment

**27.** Where the period of credit in respect of a claim has not expired or there has been an extension of time for payment of the claim, the lien claimant may nevertheless, if an action is commenced by any other person to enforce a claim for lien against the same property, prove and obtain payment of his claim in the action as if the period of credit or the extended time had expired. R.S.O. 1960, c. 233, s. 27, *amended*. Proving  
claim in  
action by  
another  
person

#### LIEN CLAIMANT'S RIGHTS TO INFORMATION

**28.**—(1) Any lien claimant may in writing at any time demand of the owner or his agent the production, for inspection, of the contract or agreement with the contractor for or in respect of which the work was or is to be done or the Production  
of contract  
or agree-  
ment

materials were or are to be placed or furnished, if the contract or agreement is in writing or, if not in writing, the terms of the contract or agreement and the state of the accounts between the owner and the contractor, and, if the owner or his agent does not, at the time of the demand or within a reasonable time thereafter, produce the contract or agreement if in writing or, if not in writing, does not inform the person making the demand of the terms of the contract or agreement and the amount due and unpaid upon the contract or agreement or if he knowingly falsely states the terms of the contract or agreement or the amount due or unpaid thereon and if the person claiming the lien sustains loss by reason of the refusal or neglect or false statement, the owner is liable to him for the amount of the loss in an action therefor or in any action for the enforcement of a lien under this Act, and subsection 4 of section 38 applies.

Statement  
of mort-  
gagee or  
unpaid  
vendor

(2) Any lien claimant may in writing at any time demand of a mortgagee or unpaid vendor or his agent the terms of any mortgage on the land or of any agreement for the purchase of the land in respect of which the work was or is to be done or the materials were or are to be placed or furnished and a statement showing the amount advanced on the mortgage or the amount owing on the agreement, as the case may be, and, if the mortgagee or vendor or his agent fails to inform the lien claimant at the time of the demand or within a reasonable time thereafter of the terms of the mortgage or agreement and the amount advanced or owing thereon or if he knowingly falsely states the terms of the mortgage or agreement and the amount owing thereon and the lien claimant sustains loss by the refusal or neglect or misstatement, the mortgagee or vendor is liable to him for the amount of the loss in an action therefor or in any action for the enforcement of a lien under this Act, and subsection 4 of section 38 applies.

Production  
of contract  
or agree-  
ment

(3) The judge or officer having jurisdiction to try an action under this Act may, on a summary application at any time before or after an action is commenced for the enforcement of the claim for lien, make an order requiring the owner or his agent or the mortgagee or his agent or the unpaid vendor or his agent or the contractor or his agent or the subcontractor or his agent, as the case may be, to produce and permit any lien claimant to inspect any such contract or agreement or mortgage or agreement for sale or the accounts or any other relevant document upon such terms as to costs as the judge or officer deems just. R.S.O. 1960, c. 233, s. 28, *amended*.

#### ACTIONS

How claim  
enforceable

**29.—(1)** A claim for lien is enforceable in an action in the Supreme Court.

SECTION 29. No change in principle from the present Act.

SECTION 31. The O.L.R.C. Supp. Rep., p. 10, recommends that as there is no relationship between subsections 1 and 2 of section 31 of Bill 190, subsection 1 should be renumbered as section 31, subsections 2 to 7 renumbered as subsections 1 to 6 of a new section 32 and the following sections renumbered accordingly. This recommendation is implemented.

(2) An action under this Act shall be commenced by filing a statement of claim in the office of the local registrar of the Supreme Court in the county or district in which the land or part thereof is situate. <sup>Statement of claim, filing of</sup>

(3) The statement of claim shall be served within thirty days after it is filed, but the judge having jurisdiction to try the action or, in the County of York, the master may extend the time for service. <sup>Idem, service</sup>

(4) The time for delivering the statement of defence in the action shall be the same as for entering an appearance in an action in the Supreme Court. <sup>Statement of defence</sup>

(5) It is not necessary to make any lien claimants parties defendant to the action, but all lien claimants served with the notice of trial shall for all purposes be deemed to be parties to the action. <sup>Parties</sup>

(6) After the commencement of the action, any lien claimant or other person interested may apply to the judge having jurisdiction to try the action or, in the County of York, a judge of the Supreme Court to speed the trial of the action. <sup>Motion to speed trial</sup>  
R.S.O. 1960, c. 233, s. 29, *amended*.

**30.** Any number of lien claimants claiming liens on the same land may join in an action, and an action brought by a lien claimant shall be deemed to be brought on behalf of himself and all other lien claimants. <sup>Lien claimants joining in action</sup>  
R.S.O. 1960, c. 233, s. 30, *amended*.

**31.**—(1) Except in the County of York, the action shall be tried by the local judge of the Supreme Court in the county or district in which the action was commenced, but, upon the application of any party or other interested person made according to the practice of the Supreme Court and upon notice, the court may direct that the action be tried by a judge of the Supreme Court at the regular sittings of the court for the trial of actions in the county or district in which the action was commenced. <sup>Tribunal and place of trial</sup>  
R.S.O. 1960, c. 233, s. 31 (1, 2).

(2) In the County of York, the action shall be tried by a judge of the Supreme Court, but, <sup>Idem, York County</sup>

(a) on motion after defence or defence to counterclaim, if any, has been delivered or the time for such delivery has expired, a judge of the Supreme Court may refer the whole action to the master for trial pursuant to section 69 of *The Judicature Act*; or <sup>R.S.O. 1960, c. 197</sup>



R.S.O. 1960,  
c. 197

(b) at the trial, a judge of the Supreme Court may direct a reference to the master pursuant to section 68 or 69 of *The Judicature Act*. R.S.O. 1960, c. 233, s. 31 (3), *amended*.

Application  
to set aside  
judgment  
directing a  
reference

(3) Where on motion the whole action is referred to the master for trial, any person brought into the proceedings subsequent thereto and served with a notice of trial may apply to a judge of the Supreme Court to set aside the judgment directing the reference within seven days after service of notice of trial and, if such person fails to make such application, he is bound by such judgment as if he were originally a party thereto.

Amend-  
ment of  
pleadings  
on reference

(4) Where the action is referred to the master for trial, he may grant leave to amend any pleading. R.S.O. 1960, c. 233, s. 31 (4, 5).

Powers of  
local  
judges  
S.C.O., etc.

**32.** The local judges of the Supreme Court and the master to whom a reference for trial has been directed, in addition to their ordinary powers, have all the jurisdiction, powers and authority of the Supreme Court to try and completely dispose of the action and questions arising therein and all questions of set-off and counterclaim arising under the building contract or out of the work done or materials furnished to the property in question. R.S.O. 1960, c. 233, s. 32 (1), *amended*.

Where con-  
tract covers  
several  
buildings

**33.** Where an owner enters into an entire contract for the supply of materials to be used in several buildings, the person supplying the materials may ask to have his lien follow the form of the contract and that it be for an entire sum upon all the buildings, but, in case the owner has sold one or more of the buildings, the judge or officer trying the action has jurisdiction equitably to apportion against the respective buildings the amount included in the claim for lien under the entire contract. R.S.O. 1960, c. 233, s. 32 (2), *amended*.

Power to  
appoint a  
receiver of  
rents and  
profits

**34.—(1)** At any time after the delivery of the statement of claim, the judge or officer having jurisdiction to try the action may, on the application of any lien claimant, mortgagee or other person interested, appoint a receiver of the rents and profits of the property against which the claim for lien is registered, upon such terms and upon the giving of such security or without security as the judge or officer deems just.

Power to  
direct  
sale and  
appoint  
trustee

(2) Any lien claimant, mortgagee or other person interested may make an application to the judge or officer at any time before or after judgment, which may hear *viva voce* or affidavit

SECTION 34—Subsection 2. As recommended by the O.L.R.C. Supp. Rep., p. 10, the powers that trustees may exercise under the section are broadened to include, if authorized by court order, the power to lease the property against which the claim for lien is registered.

Subsection 3. The words "but only in cases where there is no dispute as to the priority of any such mortgage" at the end of the provision as it appeared in Bill 190 have been deleted as recommended by the O.L.R.C. Supp. Rep., p. 11. This will expedite the trial of mechanics' lien actions by giving the court power to direct a sale under the court's supervision in cases where the priority of a mortgage is in dispute or where the lien claimants refuse to take a position one way or the other.



evidence or both and appoint, upon such terms and upon the giving of such security or without security as the judge or officer deems just, a trustee or trustees with power to manage, mortgage, lease and sell, or manage, mortgage, lease or sell, the property against which the claim for lien is registered, and the exercise of such powers shall be under the supervision and direction of the judge or officer, and with power, when so directed by the judge or officer, to complete or partially complete the property, and, in the event that mortgage moneys are advanced to the trustee or trustees as the result of any of the powers conferred upon him or them under this subsection, such moneys take priority over every claim of lien existing as of the date of the appointment.

(3) Any property directed to be sold under subsection 2 <sup>Property offered for sale</sup> may be offered for sale subject to any mortgage or other charge or encumbrance if the judge or officer so directs.

(4) The proceeds of any sale made by a trustee or trustees <sup>Proceeds to be paid into court</sup> under subsection 2 shall be paid into court and are subject to the claims of all lien claimants, mortgagees or other persons interested in the property so sold as their respective rights are determined, and, in so far as applicable, section 39 applies.

(5) The judge or officer shall make all necessary orders for <sup>Orders for completion of sale</sup> the completion of any mortgage, lease or sale authorized to be made under subsection 2.

(6) Any vesting order made of property sold by a trustee <sup>Vesting of title</sup> or trustees appointed under subsection 2 vests the title of the property free from all claims for liens, encumbrances and interests of any kind including dower, except in cases where sale is made subject to any mortgage, charge, encumbrance or interest as hereinbefore provided, but nothing in this section or elsewhere in this Act shall be deemed to extinguish the right to dower, if any, of any married woman or the right to have the value of her dower ascertained and deducted from the proceeds of the sale so paid into court. R.S.O. 1960, c. 233, s. 32 (3-8), *amended*.

**35.** At any time after delivery of the statement of claim <sup>Order for preservation of property</sup> and before judgment, or after judgment and pending the hearing and determination of any appeal, any lien claimant, mortgagee or other interested person may make an application to the judge or officer having jurisdiction to try the action, who may hear *viva voce* or affidavit evidence or both and make an order for the preservation of any property pending the determination of the action and any appeal. *New*.

Consolidation of actions

**36.** Where more actions than one are brought to realize liens in respect of the same land, the judge or officer having jurisdiction to try the action may, on the application of any party to any one of the actions or on the application of any other person interested, consolidate all such actions into one action and award the conduct of the consolidated action to any plaintiff as the judge or officer deems just. R.S.O. 1960, c. 233, s. 33, *amended*.

Transferring carriage of proceedings

**37.** Any lien claimant entitled to the benefit of an action may at any time apply to the judge or officer having jurisdiction to try the action for the carriage of the proceedings, and the judge or officer may make an order awarding such lien claimant the carriage of the proceedings. R.S.O. 1960, c. 233, s. 34, *amended*.

Appointing day for trial

**38.—**(1) After the delivery of the statement of defence where the plaintiff's claim is disputed, or after the time for delivery of defence in all other cases, either party may apply *ex parte* to a judge or officer having jurisdiction to try the action to fix a day for the trial thereof, and the judge or officer shall appoint the time and place of trial, and the order, signed by the judge or officer, shall form part of the record of the proceedings.

Notice of trial and service

(2) The party obtaining an appointment for the trial shall, at least ten clear days before the day appointed, serve notice of trial upon the solicitors for the defendants who appear by solicitors and upon the defendants who appear in person, and upon all the lienholders who have registered their claims as required by this Act or of whose claims he has notice, and upon all other persons having any charge, encumbrance or claim on the land subsequent in priority to the lien, who are not parties, and such service shall be personal unless otherwise directed by the judge or officer who may direct in what manner the notice of trial is to be served.

Idem

(3) Where any person interested in the land has been served with a statement of claim and makes default in delivering a statement of defence, he shall nevertheless be served with notice of trial and is entitled to defend on such terms as to costs and otherwise as the judge or officer having jurisdiction to try the action deems just.

Trial

(4) The judge, or where a reference for trial is directed, the master,

(a) shall try the action, including any set-off and counter-claim, and all questions that arise therein or that are necessary to be tried in order to completely dispose

of the action and to adjust the rights and liabilities of the persons appearing before him or upon whom notice of trial has been served;

(b) shall take all accounts, make all inquiries, give all directions and do all other things necessary to finally dispose of the action and of all matters, questions and accounts arising therein or at the trial, and to adjust the rights and liabilities of and give all necessary relief to all parties to the action and all persons who have been served with the notice of trial; and

(c) shall embody the results of the trial,

(i) in the case of a judge, in a judgment, and

(ii) in the case of a master, in a report,

which judgment or report may direct payment forthwith by the person or persons primarily liable to pay the amount of the claims and costs as ascertained by the judgment or report, and execution may be issued therefor forthwith in the case of a judgment and after confirmation thereof, in the case of a report.

(5) The form of the judgment or report may be varied by the judge or officer in order to meet the circumstances of the case so as to afford to any party to the proceedings any right or remedy in the judgment or report to which he may be entitled. Power to vary form of judgment

(6) The judge or officer may order that the estate or interest charged with the lien be sold, and may direct the sale to take place at any time after judgment or confirmation of the report, allowing, however, a reasonable time for advertising the sale. Sale

(7) A lien claimant who did not prove his claim at the trial, on application to the judge or officer before whom the action or reference was tried, may be let in to prove his claim, on such terms as to costs and otherwise as are deemed just, at any time before the amount realized in the action for the satisfaction of liens has been distributed, and, where his claim is allowed, the judgment or report shall be amended so as to include his claim. Letting in lien claimants who have not proved their claims at trial

(8) Any lien claimant for an amount not exceeding \$200 may be represented by an agent who is not a barrister and solicitor. Right of lien claimants to representation

(9) An action or reference under this Act may be tried by any judge or officer having jurisdiction to try the action or Action may be tried by any judge



reference notwithstanding that the time and place for the trial or reference thereof were appointed and fixed by another judge or officer. R.S.O. 1960, c. 233, s. 35, *amended*.

Applications  
for  
directions

(10) Any party to an action under this Act or any other interested person may at any time and from time to time apply to a judge or officer having jurisdiction to try the action or reference for directions as to pleadings, discovery, production or any other matter relating to the action or reference, including the cross-examination of a lien claimant or his agent or assignee on his affidavit verifying the claim. *New.*

Report  
where sale  
is had

**39.**—(1) Where a sale is had, the moneys arising therefrom shall be paid into court to the credit of the action, and the judge or officer before whom the action was tried shall direct to whom the moneys in court shall be paid and may add to the claim of the person conducting the action his fees and actual disbursements incurred in connection with the sale, and, where sufficient to satisfy the judgment and costs is not realized from the sale, he shall certify the amount of the deficiency and the names of the persons who are entitled to recover the same, showing the amount that each is entitled to recover and the persons adjudged to pay the same, giving credit for payments made, if any, under subsection 4 of section 38, and the persons so entitled may enforce payment of the amounts so found to be due by execution or otherwise.

Completion  
of sale

(2) The judge or officer before whom the action was tried may make all necessary orders for the completion of the sale and for vesting the property in the purchaser. R.S.O. 1960, c. 233, s. 36 (1, 2).

Where  
lien not  
established

**40.** Where a lien claimant fails to establish a lien, he may nevertheless recover a personal judgment against any party to the action for such sum as may appear to be due to him and which he might recover in an action against such party. R.S.O. 1960, c. 233, s. 36 (3).

Right of  
lienholders  
whose claims  
are not  
payable to  
share in  
proceeds

**41.** Where property subject to a lien is sold in an action to enforce a lien, every lienholder is entitled to share in the proceeds of the sale in respect of the amount then owing to him, although the same or part thereof was not payable at the time of the commencement of the action or is not then presently payable. R.S.O. 1960, c. 233, s. 37.

#### STATED CASE

Stated case

**42.**—(1) If in the course of proceedings to enforce a lien a question of law arises, the judge or officer trying the case may, at the request of any party, state the question in the form of a stated case for the opinion of the Court of Appeal, and the stated case shall thereupon be set down to be heard before the Court of Appeal and notice of hearing shall be served by the party setting down upon all parties concerned.



SECTION 43—Subsection 1. The limitation on appeals that is in the present Act but was not in Bill 190 appears at the commencement of this provision as recommended by the O.L.R.C. Supp. Rep., p. 11.

(2) The stated case shall set forth the facts material for the determination of the question raised, and all papers necessary for the hearing of the stated case by the Court of Appeal shall be transmitted to the registrar of the Supreme Court. R.S.O. 1960, c. 233, s. 39, *amended*.

#### APPEAL

**43.**—(1) Except where the amount of a judgment in respect of a claim or counterclaim is \$200 or less, an appeal lies from any judgment under this Act to the Court of Appeal. R.S.O. 1960, c. 233, s. 40 (1), *amended*.

(2) Where a question is referred to the master for inquiry and report under subsection 2 of section 31, an appeal lies in the manner prescribed by the rules of court.

(3) Where an action is referred to the master for trial under subsection 2 of section 31, the report shall be filed and shall be deemed to be confirmed at the expiration of fifteen days from the date of service of notice of filing the same, unless notice of appeal is served within that time.

(4) An appeal from a judgment or report made on a reference for trial lies in like manner and to the same extent as from the decision of a judge trying an action in the Supreme Court without a jury. R.S.O. 1960, c. 233, s. 40 (2, 3, 4).

(5) The costs of an appeal shall not be governed by subsections 2 and 3 of section 45 but, subject to any order of the Court of Appeal, shall be upon the scale of costs allowed in county court appeals where the amount involved is within the proper competence of the county court, and, where it exceeds that amount, upon the Supreme Court scale. R.S.O. 1960, c. 233, s. 40 (5), *amended*.

#### FEEES AND COSTS

**44.** The fee payable by every plaintiff, every plaintiff by counterclaim and every lien claimant, including every person recovering a personal judgment, in any action to realize a lien under this Act is,

- (a) \$5 on a claim or counterclaim not exceeding \$500;
- (b) \$10 on a claim or counterclaim exceeding \$500 but not exceeding \$1,000;
- (c) \$10 on a claim or counterclaim exceeding \$1,000, plus \$1 for every \$1,000 or fraction thereof in excess of \$1,000,



but no fee is payable on a claim for wages only, and in no case shall the fee on a claim exceed \$75 or on a counterclaim exceed \$25. R.S.O. 1960, c. 233, s. 41, *amended*.

Costs not  
otherwise  
provided  
for

**45.**—(1) Subject to subsections 2, 3, 4 and 5, any order as to costs in an action under this Act is in the discretion of the judge or officer who tries the action. R.S.O. 1960, c. 233, s. 46, *amended*.

Limit of  
costs to  
plaintiffs

(2) The costs of the action, exclusive of actual disbursements, awarded to the plaintiffs and successful lienholders, shall not exceed in the aggregate 25 per cent of the total amount found to have been actually due on the liens at the time of the registration thereof, and shall be apportioned and borne in such proportion as the judge or officer who tries the action may direct, but in making the apportionment he shall have regard to the actual services rendered by or on behalf of the parties respectively, provided that, where a counterclaim is set up by a defendant, the amount and apportionment of the costs in respect thereof are in the discretion of the judge or officer who tries the action. R.S.O. 1960, c. 233, s. 42, *amended*.

Limit of  
costs against  
plaintiffs

(3) Where costs are awarded against the plaintiff or other persons claiming liens, they shall not exceed, except in the case of a counterclaim, 25 per cent of the claim of the plaintiff and the other claimants, besides actual disbursements, and shall be apportioned and borne as the judge or officer who tries the action may direct. R.S.O. 1960, c. 233, s. 43, *amended*.

Costs where  
least expen-  
sive course  
not taken

(4) Where the least expensive course is not taken by a plaintiff, the costs allowed to him shall in no case exceed what would have been incurred if the least expensive course had been taken. R.S.O. 1960, c. 233, s. 44.

Cost of  
drawing and  
registering  
and vacating  
registration  
of lien

(5) Where a lien is discharged or vacated under section 25 or where judgment is given in favour of or against a claim for a lien, in addition to the costs of the action, the judge or officer who tries the action may allow a reasonable amount for the costs of drawing and registering the claim for lien or of vacating the registration thereof, but this does not apply where the claimant fails to establish a valid lien. R.S.O. 1960, c. 233, s. 45.

#### RULES OF PRACTICE

Rules of  
practice

**46.**—(1) The object of this Act being to enforce liens at the least expense, the procedure shall be as far as possible of a summary character, having regard to the amount and nature of the liens in question. R.S.O. 1960, c. 233, s. 47 (1).

SECTION 45. The intent is clarified as recommended by the O.L.R.C.  
Supp. Rep., p. 11.

SECTION 46—Subsection 4. This new provision implements a **recom-**  
**mendation** of the O.L.R.C. Supp. Rep., p. 11.

(2) Except where otherwise provided by this Act, no interlocutory proceedings shall be permitted without the consent of the judge or officer having jurisdiction to try the action, and then only upon proper proof that such proceedings are necessary. Interlocutory proceedings

(3) The judge or officer having jurisdiction to try the action may obtain the assistance of any merchant, accountant, actuary, building contractor, architect, engineer or person in such way as he deems fit, the better to enable him to determine any matter of fact in question, and may fix the remuneration of any such person and direct payment thereof by any of the parties. R.S.O. 1960, c. 233, s. 47 (2, 3), *amended*. Assistance of experts

(4) Unless otherwise provided in this Act, the Rules of Practice and Procedure of the Supreme Court apply to proceedings under this Act. *New*. Rules of practice

#### SERVICE OF DOCUMENTS

**47.** Except where otherwise directed by the judge or officer having jurisdiction to try the action, all documents relating to an action under this Act, other than statements of claim and notices of trial, are sufficiently served upon the intended recipient if sent by registered mail addressed to the intended recipient at his address for service. *New*. Service of documents

#### LIENS ON CHATTELS

**48.—**(1) Every person who has bestowed money, skill or materials upon any chattel or thing in the alteration or improvement of its properties or for the purpose of imparting an additional value to it, so as thereby to be entitled to a lien upon the chattel or thing for the amount or value of the money or skill and material bestowed, has, while the lien exists but not afterwards, in case the amount to which he is entitled remains unpaid for three months after it ought to have been paid, the right, in addition to any other remedy to which he may be entitled, to sell by auction the chattel or thing on giving one week's notice by advertisement in a newspaper having general circulation in the municipality in which the work was done, setting forth the name of the person indebted, the amount of the debt, a description of the chattel or thing to be sold, the time and place of sale, and the name of the auctioneer, and leaving a like notice in writing at the last known place of residence, if any, of the owner, if he is a resident of the municipality. Right of chattel lienholder to sell chattel

(2) Such person shall apply the proceeds of the sale in payment of the amount due to him and the costs of advertising and sale and shall upon application pay over any surplus to the person entitled thereto. R.S.O. 1960, c. 233, s. 48, *amended*. Application of proceeds of sale

## FORMS

Forms

**49.** The Lieutenant Governor in Council may make regulations prescribing forms and providing for their use. *New.*

## MISCELLANEOUS

R.S.O. 1960,  
c. 233;  
1961-62,  
c. 78;  
1962-63,  
c. 79;  
1966, c. 84,  
repealed

**50.** *The Mechanics' Lien Act, The Mechanics' Lien Amendment Act, 1961-62, The Mechanics' Lien Amendment Act, 1962-63 and The Mechanics' Lien Amendment Act, 1966 are repealed.*

Commence-  
ment

**51.** This Act comes into force on a day to be named by the Lieutenant Governor by his proclamation.

Short title

**52.** This Act may be cited as *The Mechanics' Lien Act, 1968-69.*



The Mechanics' Lien Act, 1968-69

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*1st Reading*

December 12th, 1968

*2nd Reading*

*3rd Reading*

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MR. WISHART

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BILL 36

2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69



**The Mechanics' Lien Act, 1968-69**

MR. WISHART

*(Reprinted as amended by the Committee of the Whole House)*

#### EXPLANATORY NOTES

GENERAL. In 1965 the Ontario Law Reform Commission undertook an extensive study of the law in Ontario on mechanics' liens.

A report dated February 22, 1966, was made by the Commission to the Attorney General containing its recommendations for up-dating *The Mechanics' Lien Act*.

Bill 190, based upon the report, was introduced and given first reading at the 1966 Session. This gave the proposed legislation wide distribution in convenient form for study by interested persons and organizations.

The Commission then held public hearings and considered many submissions which resulted in a supplementary report dated May 26, 1967.

The recommendations of the Commission contained in the supplementary report have been incorporated in this Bill. There is, however, one major exception. This Bill does not transfer jurisdiction in mechanics' lien actions from the Supreme Court to the county and district courts as recommended by the Commission in both of its reports. It is thought advisable to leave this matter in abeyance pending the conclusion of the general review of the jurisdictions of the several court systems in Ontario now going on as a result of the recommendations of the McRuer Report.

This Bill also contains a number of editorial and other changes, designed to clarify the intent, that have resulted from the study of Bill 190.

In the following notes the supplementary report of the Commission is referred to as O.L.R.C. Supp. Rep.

## The Mechanics' Lien Act, 1968-69

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.**—(1) In this Act,

Interpre-  
tation

- (a) “completion of the contract” means substantial performance, not necessarily total performance, of the contract;
- (b) “contractor” means a person contracting with or employed directly by the owner or his agent for the doing of work or the placing or furnishing of materials for any of the purposes mentioned in this Act;
- (c) “materials” includes every kind of movable property;
- (d) “owner” includes any person and corporation, including a municipal corporation and a railway company, having any estate or interest in the land upon which or in respect of which work is done or materials are placed or furnished, at whose request, and
  - (i) upon whose credit, or
  - (ii) on whose behalf, or
  - (iii) with whose privity or consent, or
  - (iv) for whose direct benefit,

work is done or materials are placed or furnished and all persons claiming under him or it whose rights are acquired after the work in respect of which the lien is claimed is commenced or the materials placed or furnished have been commenced to be placed or furnished;

- (e) “registrar” includes a master of titles;
- (f) “registry office” includes a land titles office;

(g) “subcontractor” means a person not contracting with or employed directly by the owner or his agent for any of the purposes mentioned in this Act, but contracting with or employed by a contractor or, under him, by another subcontractor;

(h) “wages” means the money earned by a workman for work done by time or as piece work, and includes all monetary supplementary benefits, whether by statute, contract or collective bargaining agreement;

(i) “workman” means a person employed for wages in any kind of labour, whether employed under a contract of service or not. R.S.O. 1960, c. 233, s. 1, *amended*.

Work  
includes  
service

(2) In this Act, the expression “the doing of work” includes the performance of a service, and corresponding expressions have corresponding meanings.

Substantial  
performance

(3) For the purposes of this Act, a contract shall be deemed to be substantially performed,

(a) when the work or a substantial part thereof is ready for use or is being used for the purpose intended; and

(b) when the work to be done under the contract is capable of completion or correction at a cost of not more than,

(i) 3 per cent of the first \$250,000 of the contract price,

(ii) 2 per cent of the next \$250,000 of the contract price, and

(iii) 1 per cent of the balance of the contract price.

Idem

(4) For the purposes of this Act, where the work or a substantial part thereof is ready for use or is being used for the purpose intended and where the work cannot be completed expeditiously for reasons beyond the control of the contractor, the value of the work to be completed shall be deducted from the contract price in determining substantial performance. *New*.

#### GENERAL

Trust funds  
in hands of  
contractors

2.—(1) All sums received by a builder, contractor or subcontractor on account of the contract price constitute a trust fund in his hands for the benefit of the owner, builder, contractor, subcontractor, Workmen’s Compensation Board,

SECTION 1—Subsections 3 and 4 are new. They are designed to complement the definition of "completion of the contract" and thus speed up the release of "holdback" moneys.

Subsection 4. Municipal financing is expressly excluded from the scope of the provision and its intent is clarified as recommended in O.L.R.C. Supp. Rep., pp. 6, 7.



workmen, and persons who have supplied materials on account of the contract or who have rented equipment to be used on the contract site, and the builder, contractor or subcontractor, as the case may be, is the trustee of all such sums so received by him and he shall not appropriate or convert any part thereof to his own use or to any use not authorized by the trust until all workmen and all persons who have supplied materials on the contract or who have rented equipment to be used on the contract site and all subcontractors are paid for work done or materials supplied on the contract and the Workmen's Compensation Board is paid any assessment with respect thereto. R.S.O. 1960, c. 233, s. 3 (1), *amended*.

(2) Notwithstanding subsection 1, where a builder, contractor or subcontractor has paid in whole or in part for any materials supplied on account of the contract or for any rented equipment or has paid any workman who has performed any work or any subcontractor who has placed or furnished any materials in respect of the contract, the retention by such builder, contractor or subcontractor of a sum equal to the sum so paid by him shall be deemed not to be an appropriation or conversion thereof to his own use or to any use not authorized by the trust. R.S.O. 1960, c. 233, s. 3 (3), *amended*. Exception

(3) Where a sum becomes payable under a contract to a contractor by an owner on the certificate of a person authorized under the contract to make such a certificate, an amount equal to the sum so certified that is in the owner's hands or received by him at any time thereafter shall, until paid to the contractor, constitute a trust fund in the owner's hands for the benefit of the contractor, subcontractor, Workmen's Compensation Board, workmen, and persons who have supplied materials on account of the contract or who have rented equipment to be used on the contract site, and the owner shall not appropriate or convert any part thereof to his own use or to any use not authorized by the trust until all workmen and all persons who have supplied materials on the contract or who have rented equipment to be used on the contract site and all contractors and subcontractors are paid for work done or materials supplied on the contract and the Workmen's Compensation Board is paid any assessment with respect thereto. Trust funds  
in hands of  
owners

(4) All sums received by an owner, other than a municipality as defined in *The Department of Municipal Affairs Act* or a metropolitan or regional municipality or a local board thereof, which are to be used in the financing, including the purchase price of the land and the payment of prior encumbrances, of a building, structure or work, constitute, subject to the payment of the purchase price of the land and prior Advances on  
mortgage,  
etc., a trust  
fund  
R.S.O. 1960,  
c. 98



encumbrances, a trust fund in the hands of the owner for the benefit of the persons mentioned in subsection 1, and, until the claims of all such persons have been paid, the owner shall not appropriate or convert any part thereof to his own use or to any use not authorized by the trust.

**Exception** (5) Notwithstanding subsection 4, where an owner has himself paid in whole or in part for any work done, for any materials placed or furnished or for any rented equipment, the retention by him from any moneys received from the lender under subsection 4 of a sum equal to the sum so paid by him shall be deemed not to be an appropriation or conversion thereof to his own use or to any use not authorized by the trust.

**Protection for money lenders** (6) Notwithstanding anything in this section, where money is lent to a person upon whom a trust is imposed by this section and is used by him to pay in whole or in part for any work done, for any materials placed or furnished or for any rented equipment, trust moneys may be applied to discharge the loan to the extent that the lender's money was so used by the trustee, and any sum so applied shall be deemed not to be an appropriation or conversion to the trustee's own use or to any use not authorized by the trust. *New.*

**Offence and penalty** (7) Every person upon whom a trust is imposed by this section who knowingly appropriates or converts any part of any trust moneys referred to in subsection 1, 3 or 4 to his own use or to any use not authorized by the trust is guilty of an offence and on summary conviction is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than two years, or to both, and every director or officer of a corporation who knowingly assents to or acquiesces in any such offence by the corporation is guilty of such offence, in addition to the corporation, and on summary conviction is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than two years, or to both. R.S.O. 1960, c. 233, s. 3 (2), *amended.*

**Limit of time for asserting claims to trust moneys** **3.** No action to assert any claim to trust moneys referred to in section 2 shall be commenced against a lender of money to a person upon whom a trust is imposed by that section except,

- (a) in the case of a claim by a contractor or subcontractor in cases not provided for in clauses *b*, *c* and *d*, within nine months after the completion or abandonment of the contract or subcontract;
- (b) in the case of a claim for materials, within nine months after the placing or furnishing of the last material;

Subsection 5. This extension of the "trustee provisions" is new. It is recommended in O.L.R.C. Supp. Rep., pp. 5-7.

SECTION 4—Subsection 2, clause *b*. In its original report the Ontario Law Reform Commission recommended “\$25 a day” which is the sum that appeared in Bill 190.

As a result of further submissions and consideration, the Commission recommends \$35 a day. See O.L.R.C. Supp. Rep., p. 7. The Committee on Legal and Municipal Bills raised it to \$50 a day.

- (c) in the case of a claim for services, within nine months after the completion of the service; or
- (d) in the case of a claim for wages, within nine months after the last work was done for which the claim is made. *New.*

4.—(1) Every agreement, oral or written, express or implied, on the part of any workman that this Act does not apply to him or that the remedies provided by it are not available for his benefit is void. Agreements waiving application of Act are void

(2) Subsection 1 does not apply, Exception

(a) to a manager, officer or foreman; or

(b) to any person whose wages are more than \$50 a day.

(3) No agreement deprives any person otherwise entitled to a lien under this Act, who is not a party to the agreement, of the benefit of the lien, but it attaches, notwithstanding such agreement. Effect upon third party of agreement waiving lien R.S.O. 1960, c. 233, s. 4, *amended*.

#### CREATION OF LIENS

5.—(1) Unless he signs an express agreement to the contrary and in that case subject to section 4, any person who does any work upon or in respect of, or places or furnishes any materials to be used in, the making, constructing, erecting, fitting, altering, improving or repairing of any land, building, structure or works or the appurtenances to any of them for any owner, contractor or subcontractor by virtue thereof has a lien for the price of the work or materials upon the estate or interest of the owner in the land, building, structure or works and appurtenances and the land occupied thereby or enjoyed therewith, or upon or in respect of which the work is done, or upon which the materials are placed or furnished to be used, limited, however, in amount to the sum justly due to the person entitled to the lien and to the sum justly owing, except as herein provided, by the owner, and the placing or furnishing of the materials to be used upon the land or such other place in the immediate vicinity of the land designated by the owner or his agent is good and sufficient delivery for the purpose of this Act, but delivery on the designated land does not make such land subject to a lien. General right to a lien

(2) Except for the purpose of section 11, the lien given by subsection 1 does not attach to any public street or highway or to any work or improvement done thereon. Exception

Lien  
attaches  
where  
materials  
incorporated  
into  
building

(3) The lien given by subsection 1 attaches as therein set out where the materials delivered to be used are incorporated into the land, building, structure or works, notwithstanding that the materials may not have been delivered in strict accordance with subsection 1.

Interpre-  
tation

(4) In subsection 1, "agent" includes the contractor or subcontractor for whom the materials are placed or furnished, unless the person placing or furnishing the materials has had actual notice from the owner to the contrary. R.S.O. 1960, c. 233, s. 5, *amended*.

Lien for  
rented  
equipment

(5) A person who rents equipment to an owner, contractor or subcontractor for use on a contract site shall be deemed for the purposes of this Act to have performed a service for which he has a lien for the price of the rental of the equipment used on the contract site, limited, however in amount to the sum justly owed and due to the person entitled to the lien from the owner, builder, contractor or subcontractor in respect of the rental of the equipment. *New*.

When  
husband's  
interest  
liable for  
work done  
or materials  
furnished  
on land of  
spouse

**6.** Where work is done or materials are placed or furnished to be used upon or in respect of the land of a married woman, or in which she has an interest or an inchoate right of dower, with the privity or consent of her husband, he shall be presumed conclusively to be acting as her agent as well as for himself for the purposes of this Act unless before doing the work or placing or furnishing the materials the person doing the work or placing or furnishing the materials has had actual notice to the contrary. R.S.O. 1960, c. 233, s. 6, *amended*.

Where estate  
charged is  
leasehold

**7.—**(1) Where the estate or interest upon which the lien attaches is leasehold, the fee simple is also subject to the lien if the person doing the work or placing or furnishing the materials gives notice in writing, by personal service, to the owner in fee simple or his agent of the work to be done or materials to be placed or furnished unless the owner in fee simple or his agent within fifteen days thereafter gives notice in writing, by personal service, to such person that he will not be responsible therefor.

Forfeiture  
or cancella-  
tion of  
lease, effect  
of on lien-  
holder

(2) No forfeiture or attempted forfeiture of the lease on the part of the landlord, or cancellation or attempted cancellation of the lease except for non-payment of rent, deprives any person otherwise entitled to a lien of the benefit of the lien, but the person entitled to the lien may pay any rent accruing after he becomes so entitled, and the amount so paid may be added to his claim.

SECTION 5—Subsection 5. The intent of the original recommendation of the Ontario Law Reform Commission is clarified. It is intended that the lien for rented equipment is for an amount that is reasonable and justly due in the particular circumstances. See O.L.R.C. Supp. Rep., p. 8.

SECTION 7—Subsection 1. The intent is clarified. See O.L.R.C. Supp. Rep., p. 8. Also, the notice period is increased from ten to fifteen days.





(3) Where the land and premises upon or in respect of which any work is done or materials are placed or furnished are encumbered by a mortgage or other charge that was registered in the proper registry office before any lien under this Act arose, the mortgage or other charge has priority over all liens under this Act to the extent of the actual value of the land and premises at the time the first lien arose, such value to be ascertained by the judge or officer having jurisdiction to try an action under this Act. <sup>Prior mortgages</sup>

(4) The time at which the first lien arose shall be deemed to be the time at which the first work was done or the first materials placed or furnished, irrespective of whether a claim for lien in respect thereof is registered or enforced and whether or not such lien is before the court. R.S.O. 1960, c. 233, s. 7 (1-4), *amended*. <sup>When first lien arose</sup>

(5) Any mortgage existing as a valid security, notwithstanding that it is a prior mortgage within the meaning of subsection 3, may also secure future advances, subject to subsection 1 of section 14. R.S.O. 1960, c. 233, s. 7 (5). <sup>Future advances</sup>

(6) A registered agreement for the sale and purchase of land and any moneys *bona fide* secured or payable thereunder has the same priority over a lien as is provided for a mortgage and mortgage moneys in subsections 3 and 5, and for the purposes of this Act the seller shall be deemed to be a mortgagee, and any moneys *bona fide* secured and payable under such agreement shall be deemed to be mortgage moneys *bona fide* secured or advanced. R.S.O. 1960, c. 233, s. 7 (6), *amended*. <sup>Registered agreement for sale and purchase of land has same priority as mortgage</sup>

8. Where any of the property upon which a lien attaches is wholly or partly destroyed by fire, any money received by reason of any insurance thereon by an owner or prior mortgagee or chargee shall take the place of the property so destroyed and is, after satisfying any prior mortgage or charge in the manner and to the extent set out in subsection 3 of section 7, subject to the claims of all persons for liens to the same extent as if the money had been realized by a sale of the property in an action to enforce the lien. R.S.O. 1960, c. 233, s. 8. <sup>Application of insurance</sup>

9. Save as herein otherwise provided, the lien does not attach so as to make the owner liable for a greater sum than the sum payable by the owner to the contractor. R.S.O. 1960, c. 233, s. 9. <sup>Limit of amount of owner's liability</sup>

Limit of  
lien when  
claimed by  
other  
than con-  
tractor

**10.** Save as herein otherwise provided, where the lien is claimed by any person other than the contractor, the amount that may be claimed in respect thereof is limited to the amount owing to the contractor or subcontractor or other person for whom the work has been done or the materials were placed or furnished. R.S.O. 1960, c. 233, s. 10, *amended*.

Holdback

**11.**—(1) In all cases, the person primarily liable upon a contract under or by virtue of which a lien may arise shall, as the work is done or the materials are furnished under the contract, retain for a period of thirty-seven days after the completion or abandonment of the work done or to be done under the contract 15 per cent of the value of the work and materials actually done, placed or furnished, as mentioned in section 5, irrespective of whether the contract or subcontract provides for partial payments or payment on completion of the work, and the value shall be calculated upon evidence given in that regard on the basis of the contract price or, if there is no specific contract price, on the basis of the actual value of the work or materials. R.S.O. 1960, c. 233, s. 11 (1), *amended*.

Reduction  
in amount  
retained

(2) Where a contract is under the supervision of an architect, engineer or other person upon whose certificate payments are to be made and thirty-seven days have elapsed after a certificate issued by that architect, engineer or other person to the effect that the subcontract has been completed to his satisfaction has been given to the person primarily liable upon that contract and to the person who became a subcontractor by a subcontract made directly under that contract, the amount to be retained by the person primarily liable upon that contract shall be reduced by 15 per cent of the subcontract price or, if there is no specific subcontract price, by 15 per cent of the actual value of the work done or materials placed or furnished under that subcontract, but this subsection does not operate if and so long as any lien derived under that subcontract is preserved by anything done under this Act.

Idem

(3) Where a certificate issued by an architect, engineer or other person to the effect that a subcontract by which a subcontractor became a subcontractor has been completed to the satisfaction of that architect, engineer or other person has been given to that subcontractor, then, for the purposes of subsections 1, 2 and 3 of section 21 and section 23, that subcontract and any materials placed or furnished or to be placed or furnished thereunder and any work done or to be done thereunder shall, so far as concerns any lien thereunder of that subcontractor, be deemed to have been completed or placed or furnished not later than the time at which the certificate was so given. R.S.O. 1960, c. 233, s. 11 (3, 4), *amended*.

(4) Where an architect, engineer or other person neglects or refuses to issue and deliver a certificate upon which payments are to be made under a contract or subcontract, the judge or officer having jurisdiction to try an action under this Act, upon application and upon being satisfied that the certificate should have been issued and delivered may, upon such terms and conditions as to costs and otherwise as he deems just, make an order that the work or materials to which the certificate would have related has been done or placed or furnished, as the case may be, and any such order has the same force and effect as if the certificate had been issued and delivered by the architect, engineer or other person. *New.*

Court order  
in lieu of  
certificate

(5) Where there is a lien under section 5, the lien is a charge upon the amount directed to be retained by this section in favour of lien claimants whose liens are derived under persons to whom the moneys so required to be retained are respectively payable and where there is no lien on the land by virtue of subsection 2 of section 5, a claim for work done or materials placed or furnished is a charge upon the amount directed to be retained by this section. R.S.O. 1960, c. 233, s. 11 (5), *amended.*

Effect of  
liens and  
claims on  
amounts  
retained

(6) All payments up to 85 per cent as fixed by subsection 1 and payments permitted as a result of the operation of subsections 2 and 3 made in good faith by an owner to a contractor, or by a contractor to a subcontractor, or by one subcontractor to another subcontractor, before notice in writing of the lien given by the person claiming the lien to the owner, contractor or subcontractor, as the case may be, operate as a discharge *pro tanto* of the lien.

Payments  
made in  
good faith  
without  
notice of  
lien

(7) Payment of the percentage required to be retained under this section may be validly made so as to discharge all claims in respect of such percentage after the expiration of the period of thirty-seven days mentioned in subsection 1 unless in the meantime proceedings have been commenced to enforce any lien or charge against the percentage as provided by sections 22 and 23, in which case the owner may pay the percentage into court in the proceedings, and such payment constitutes valid payment in discharge of the owner to the amount thereof.

Payment of  
percentage  
and  
discharge  
of liens

(8) Every contract shall be deemed to be amended in so far as is necessary to be in conformity with this section. R.S.O. 1960, c. 233, s. 11 (5-9).

Amendment  
of contracts

(9) Where the contractor or subcontractor makes default in completing his contract, the percentage required to be retained shall not, as against any lien claimant who by virtue

Where  
percentage  
not to be  
applied



of subsection 5 has a charge thereupon, be applied by the owner, contractor or subcontractor to the completion of the contract or for any other purpose nor to the payment of damages for the non-completion of the contract by the contractor or subcontractor nor in payment or satisfaction of any claim against the contractor or subcontractor. R.S.O. 1960, c. 233, s. 11 (9), *amended*.

Payments made directly by owner to persons entitled to lien

**12.** If an owner, contractor or subcontractor makes a payment to any person entitled to a lien under section 5 or to any person who but for subsection 2 of that section would be entitled to a lien under that section, for or on account of any debt, justly due to him for work done or for materials placed or furnished to be used as therein mentioned, for which he is not primarily liable, and within three days afterwards gives written notice of the payment to the person primarily liable, or his agent, the payment shall be deemed to be a payment on his contract generally to the contractor or subcontractor primarily liable but not so as to affect the percentage to be retained by the owner as provided by section 11. R.S.O. 1960, c. 233, s. 12 (1), *amended*.

Rights of subcontractor

**13.** Every subcontractor is entitled to enforce his lien notwithstanding the non-completion or abandonment of the contract by any contractor or subcontractor under whom he claims. R.S.O. 1960, c. 233, s. 12 (2).

Priority of lien

**14.**—(1) The lien has priority over all judgments, executions, assignments, attachments, garnishments and receiving orders recovered, issued or made after the lien arises, and over all payments or advances made on account of any conveyance or mortgage after notice in writing of the lien has been given to the person making such payments or after registration of a claim for the lien as hereinafter provided, and, in the absence of such notice in writing or the registration of a claim for lien, all such payments or advances have priority over any such lien. R.S.O. 1960, c. 233, s. 13 (1), *amended*.

Priority among lienholders

(2) Except where it is otherwise provided by this Act, no person entitled to a lien on any property or money is entitled to any priority or preference over another person of the same class entitled to a lien on such property or money, and each class of lienholders ranks *pari passu* for their several amounts, and the proceeds of any sale shall be distributed among them *pro rata* according to their several classes and rights.

Mortgage given to person entitled to lien void as against lienholders

(3) Any conveyance, mortgage or charge of or on land given to any person entitled to a lien thereon under this Act in payment of or as security for any such claim, whether

given before or after such lien claim has arisen, shall, as against other parties entitled to liens under this Act, on any such land be deemed to be fraudulent and void. R.S.O. 1960, c. 233, s. 13 (2, 3).

#### PRIORITY OF WAGES

**15.—**(1) Every workman whose lien is for wages has <sup>Priority of liens for wages</sup> priority to the extent of thirty days wages over all other liens derived through the same contractor or subcontractor to the extent of and on the 15 per cent directed to be retained by section 11 to which the contractor or subcontractor through whom the lien is derived is entitled, and all such workmen rank thereon *pari passu*.

(2) Every workman is entitled to enforce a lien in respect <sup>Enforcing lien in such cases</sup> of any contract or subcontract that has not been completed and, notwithstanding anything to the contrary in this Act, may serve a notice of motion on the proper persons, returnable in four days after service thereof before the judge or officer having jurisdiction to try an action under this Act, that the applicant will on the return of the motion ask for judgment on his claim for lien, registered particulars of which shall accompany the notice of motion duly verified by affidavit.

(3) If the contract has not been completed when the lien <sup>Calculating percentage when contract not fulfilled</sup> is claimed by a workman, the percentage shall be calculated on the value of the work done or materials placed or furnished by the contractor or subcontractor by whom the workman is employed, having regard to the contract price, if any.

(4) Every device by an owner, contractor or subcontractor <sup>Devices to defeat priority of workmen</sup> to defeat the priority given to a workman for his wages and every payment made for the purpose of defeating or impairing a lien are void. R.S.O. 1960, c. 233, s. 14, *amended*.

#### REGISTRATION

**16.—**(1) A claim for a lien may be registered in the proper <sup>Registration of claim for lien</sup> registry office and shall set out,

- (a) the name and an address for service of the person claiming the lien and of the owner or of the person whom the person claiming the lien, or his agent, believes to be the owner of the land, and of the person for whom the work was or is to be done, or the materials were or are to be placed or furnished, and the time within which the same was or was to be done or placed or furnished;

(b) a short description of the work done or to be done, or the materials placed or furnished or to be placed or furnished;

(c) the sum claimed as due or to become due;

R.S.O. 1960,  
cc. 204, 348

(d) a description of the land as required by *The Land Titles Act* or *The Registry Act* and the regulations thereunder, as the case may be; and

(e) the date of expiry of the period of credit if credit has been given. R.S.O. 1960, c. 233, s. 16 (1), *amended*.

Verification  
of claim

(2) The claim shall be verified in duplicate by the affidavit of the person claiming the lien, or of his agent or assignee who has a personal knowledge of the matters required to be verified, and the affidavit of the agent or assignee shall state that he has such knowledge.

Lien  
against  
railway

(3) When it is desired to register a claim for lien against a railway, it is sufficient description of the land of the railway company to describe it as the land of the railway company, and every such claim shall be registered in the general register in the office for the registry division within which the lien is claimed to have arisen. R.S.O. 1960, c. 233, s. 16 (2, 3).

What may  
be included  
in claim

**17.**—(1) A claim for lien may include claims against any number of properties, and any number of persons claiming liens upon the same property may unite therein, but, where more than one lien is included in one claim, each claim for lien shall be verified by affidavit as provided in section 16.

Apportion-  
ment of  
claims

(2) The judge or officer trying the action has jurisdiction equitably to apportion against the respective properties the amounts included in any claim or claims under subsection 1. R.S.O. 1960, c. 233, s. 17, *amended*.

Informality

**18.**—(1) Substantial compliance with sections 16, 17 and 29 is sufficient and no claim for lien is invalidated by reason of failure to comply with any of the requirements of such sections unless, in the opinion of the judge or officer trying the action, the owner, contractor or subcontractor, mortgagee or other person is prejudiced thereby, and then only to the extent to which he is thereby prejudiced.

Registration  
necessary

(2) Nothing in this section dispenses with the requirement of registration of the claim for lien. R.S.O. 1960, c. 233, s. 18, *amended*.





SECTION 21. As a result of further submissions and research, the O.L.R.C. Supp. Rep., p. 8, recommends that the "umbrella principle" of the Act, which appeared as subsection 5 of section 21 of Bill 190, be dropped. The result will be that all lien claimants must register their claims, thus greatly facilitating the trial of some mechanics' lien actions.

The requirement for registration of certificates of action is to be found in section 22 (2) of this Bill.

**19.** A duplicate of the claim for lien, bearing the registrar's <sup>Duplicate to be filed</sup> certificate of registration, shall be filed on or before the trial of the action, where the action is to be tried in the County of York, in the office of the master of the Supreme Court, or, where the action is to be tried elsewhere, in the office of the clerk of the county or district court of the county or district in which the action is to be tried. R.S.O. 1960, c. 233, s. 19 (1), *amended*.

**20.** Where a claim is so registered, the person entitled to a lien shall be deemed to be a purchaser *pro tanto* and a <sup>Status of lien claimant</sup> purchaser within the provisions of *The Registry Act* and *The Land Titles Act*, but, except as herein otherwise provided, those Acts do not apply to any lien arising under this Act. R.S.O. 1960, cc. 348, 204  
R.S.O. 1960, c. 233, s. 20, *amended*.

**21.—(1)** A claim for lien by a contractor or subcontractor <sup>Limit of time for registration</sup> in cases not otherwise provided for may be registered before or during the performance of the contract or of the subcontract or within thirty-seven days after the completion or abandonment of the contract or of the subcontract, as the case may be. R.S.O. 1960, c. 233, s. 21 (1).

(2) A claim for lien for materials may be registered before <sup>Materials</sup> or during the placing or furnishing thereof, or within thirty-seven days after the placing or furnishing of the last material so placed or furnished. R.S.O. 1960, c. 233, s. 21 (2), *amended*.

(3) A claim for lien for services may be registered at any <sup>Services</sup> time during the performance of the service or within thirty-seven days after the completion of the service. R.S.O. 1960, c. 233, s. 21 (3).

(4) A claim for lien for wages may be registered at any time <sup>Wages</sup> during the doing of the work for which the wages are claimed or within thirty-seven days after the last work was done for which the lien is claimed. R.S.O. 1960, c. 233, s. 21 (4), *amended*.

(5) Where there is no lien on the land by virtue of subsection 2 of section 5, any person who is asserting a claim under subsection 5 of section 11 for work done or materials placed or furnished shall give notice in writing of his claim to the owner, to every person in whose hands are sums retained under section 11 to which his claim may relate and to the municipality in which the land is situate within thirty-seven days after the completion or abandonment of the work or the placing or furnishing of the materials. *New.* <sup>Notice of claim to holdback</sup>

## EXPIRY AND DISCHARGE

Expiry of  
liens

**22.**—(1) Every lien for which a claim is not registered ceases to exist on the expiration of the time limited in section 21 for the registration thereof.

Registration  
of certificate  
of action

(2) Upon an action under this Act being commenced, a certificate thereof shall be registered in the registry office in which the claim for lien is registered. R.S.O. 1960, c. 233, s. 22 (1), *part, amended*.

Vacating  
orders

(3) Where a certificate of action has been registered for two years or more in the registry office and no appointment has been taken out for the trial of the action, the judge or an officer having jurisdiction to try the action may, upon the application *ex parte* of any interested person, make an order vacating the certificate of action and discharging all liens depending thereon. R.S.O. 1960, c. 233, s. 22, *amended*.

When lien  
to cease  
if registered  
and not  
proceeded  
upon

**23.**—(1) Every lien for which a claim is registered ceases to exist on the expiration of ninety days after the work has been completed or the materials have been placed or furnished, or after the expiry of the period of credit, where such period is mentioned in the registered claim for lien, unless in the meantime an action is commenced to realize the claim or in which a subsisting claim may be realized, and a certificate is registered as provided by section 22. R.S.O. 1960, c. 233, s. 23, *amended*.

Expiration  
of claim

(2) Every claim asserted under subsection 5 of section 11 for work done or materials placed or furnished ceases to exist on the expiration of ninety days after,

- (a) the work has been completed or abandoned;
- (b) the materials have been placed or furnished; or
- (c) the expiry of the period of credit, where such period is mentioned in the notice referred to in subsection 5 of section 21,

unless in the meantime an action under this Act is commenced to realize the claim or in which a subsisting claim may be realized.

Idem

(3) Subsection 2 of section 22 does not apply to an action referred to in subsection 2, but sections 29, 30, 31, 32 and 34 to 38 do apply *mutatis mutandis* to such an action.

Assignment  
or death of  
lien  
claimant

**24.** The rights of a lien claimant may be assigned by an instrument in writing and, if not assigned, upon his death pass to his personal representative. R.S.O. 1960, c. 233, s. 24, *amended*.



SECTION 25. A number of changes in language have been made in order to clarify the intent, especially subsection 6 as to notice. See O.L.R.C. Supp. Rep., p. 9.

**25.**—(1) A claim for lien may be discharged by the registration of a receipt acknowledging payment, Discharge of lien

- (a) where made by a lien claimant that is not a corporation, signed by the lien claimant or his agent duly authorized in writing and verified by affidavit; or
- (b) where made by a lien claimant that is a corporation, sealed with its corporate seal. R.S.O. 1960, c. 233, s. 25 (1), *amended*.

(2) Upon application, the judge or officer having jurisdiction to try the action may, at any time, Security or payment into court and vacating lien and certificate of action

- (a) allow security for or payment into court of the amount of the claim of the lien claimant and the amount of the claims of any other subsisting lien claimants together with such costs as he may fix, and thereupon order that the registration of the claim for lien or liens and the registration of the certificate of action, if any, be vacated;
- (b) upon any other proper ground, order that the registration of the claim for lien or liens and the registration of the certificate of action, if any, be vacated; or
- (c) upon proper grounds, dismiss the action. R.S.O. 1960, c. 233, s. 25 (4), *amended*.

(3) Notwithstanding sections 22 and 23, where an order to vacate the registration of a lien is made under clause *a* or *b* of subsection 2, the lien does not cease to exist for the reason that no certificate of action is registered. Effect of order under subs. 2, cls. *a* or *b*

(4) Any money so paid into court, or any bond or other security for securing the like amount and satisfactory to the judge or officer, takes the place of the property discharged and is subject to the claims of every person who has at the time of the application a subsisting claim for lien or given notice of the claim under subsection 6 of section 11 or section 14 to the same extent as if the money, bond or other security was realized by a sale of the property in an action to enforce the lien, but such amount as the judge or officer finds to be owing to the person whose lien has been so vacated is a first charge upon the money, bond or other security. Money paid into court

(5) Where the certificate required by section 22 or 23 has not been registered within the prescribed time and an application is made to vacate the registration of a claim for lien after the time for registration of the certificate, the Where notice of application to vacate not requisite



R.S.O. 1960, cc. 204, 348 order vacating the lien may be made *ex parte* upon production of a certificate of search under *The Land Titles Act* or of a registrar's abstract under *The Registry Act*, as the case may be, together with a certified copy of the registered claim for lien. R.S.O. 1960, c. 233, s. 25 (5-7), *amended*.

Payment of money out of court

(6) Where money has been paid into court or a bond deposited in court pursuant to an order under subsection 2, the judge or officer may, upon such notice to the parties as he may require, order the money to be paid out to the persons entitled thereto or the delivery up of the bond for cancellation, as the case may be. 1961-62, c. 78, s. 1, *amended*.

Registration number

(7) An order discharging a claim for lien or vacating a certificate of action shall be registered by registering the order or a certificate thereof, under the seal of the court, that includes a description of the land as required by *The Land Titles Act* or *The Registry Act* and the regulations thereunder, as the case may be, and a reference to the registration number of every registered claim for lien and certificate of action affected thereby. 1966, c. 84, s. 1, *amended*.

#### EFFECT OF TAKING SECURITY OR EXTENDING TIME

Effect generally

**26.**—(1) The taking of any security for, or the acceptance of any promissory note or bill of exchange for, or the taking of any acknowledgment of the claim, or the giving of time for the payment thereof, or the taking of any proceedings for the recovery, or the recovery of a personal judgment for the claim, does not merge, waive, pay, satisfy, prejudice or destroy the lien unless the lien claimant agrees in writing that it has that effect. R.S.O. 1960, c. 233, s. 26 (1).

Where period of credit not expired

(2) Where any such promissory note or bill of exchange has been negotiated, the lien claimant does not thereby lose his right to claim for lien if, at the time of bringing his action to enforce it or where an action is brought by another lien claimant, he is, at the time of proving his claim in the action, the holder of such promissory note or bill of exchange.

Time for bringing action not extended

(3) Nothing in subsection 2 extends the time limited by this Act for bringing an action to enforce a claim for lien.

Time for bringing action by person who gave time for payment

(4) A person who has extended the time for payment of a claim for which he has a claim for lien in order to obtain the benefit of this section shall commence an action to enforce the claim within the time prescribed by this Act and shall register a certificate as required by sections 22 and 23, but no further proceedings shall be taken in the action until the expiration of such extension of time. R.S.O. 1960, c. 233, s. 26 (2-4), *amended*.



**27.** Where the period of credit in respect of a claim has not expired or there has been an extension of time for payment of the claim, the lien claimant may nevertheless, if an action is commenced by any other person to enforce a claim for lien against the same property, prove and obtain payment of his claim in the action as if the period of credit or the extended time had expired. R.S.O. 1960, c. 233, s. 27, *amended*.

Proving  
claim in  
action by  
another  
person

#### LIEN CLAIMANT'S RIGHTS TO INFORMATION

**28.—(1)** Any lien claimant may in writing at any time demand of the owner or his agent the production, for inspection, of the contract or agreement with the contractor for or in respect of which the work was or is to be done or the materials were or are to be placed or furnished, if the contract or agreement is in writing or, if not in writing, the terms of the contract or agreement and the state of the accounts between the owner and the contractor, and, if the owner or his agent does not, at the time of the demand or within a reasonable time thereafter, produce the contract or agreement if in writing or, if not in writing, does not inform the person making the demand of the terms of the contract or agreement and the amount due and unpaid upon the contract or agreement or if he knowingly falsely states the terms of the contract or agreement or the amount due or unpaid thereon and if the person claiming the lien sustains loss by reason of the refusal or neglect or false statement, the owner is liable to him for the amount of the loss in an action therefor or in any action for the enforcement of a lien under this Act, and subsection 4 of section 38 applies.

Production  
of contract  
or agree-  
ment

**(2)** Any lien claimant may in writing at any time demand of a mortgagee or unpaid vendor or his agent the terms of any mortgage on the land or of any agreement for the purchase of the land in respect of which the work was or is to be done or the materials were or are to be placed or furnished and a statement showing the amount advanced on the mortgage or the amount owing on the agreement, as the case may be, and, if the mortgagee or vendor or his agent fails to inform the lien claimant at the time of the demand or within a reasonable time thereafter of the terms of the mortgage or agreement and the amount advanced or owing thereon or if he knowingly falsely states the terms of the mortgage or agreement and the amount owing thereon and the lien claimant sustains loss by the refusal or neglect or misstatement, the mortgagee or vendor is liable to him for the amount of the loss in an action therefor or in any action for the enforcement of a lien under this Act, and subsection 4 of section 38 applies.

Statement  
of mort-  
gagee or  
unpaid  
vendor

Production  
of contract  
or agree-  
ment

(3) The judge or officer having jurisdiction to try an action under this Act may, on a summary application at any time before or after an action is commenced for the enforcement of the claim for lien, make an order requiring the owner or his agent or the mortgagee or his agent or the unpaid vendor or his agent or the contractor or his agent or the subcontractor or his agent, as the case may be, to produce and permit any lien claimant to inspect any such contract or agreement or mortgage or agreement for sale or the accounts or any other relevant document upon such terms as to costs as the judge or officer deems just. R.S.O. 1960, c. 233, s. 28, *amended*.

#### ACTIONS

How claim  
enforceable

**29.**—(1) A claim for lien is enforceable in an action in the Supreme Court.

Statement  
of claim,  
filing of

(2) An action under this section shall be commenced by filing a statement of claim in the office of the local registrar of the Supreme Court in the county or district in which the land or part thereof is situate.

Idem,  
service

(3) The statement of claim shall be served within thirty days after it is filed, but the judge having jurisdiction to try the action or, in the County of York, the master may extend the time for service.

Statement  
of defence

(4) The time for delivering the statement of defence in the action shall be the same as for entering an appearance in an action in the Supreme Court.

Parties

(5) It is not necessary to make any lien claimants parties defendant to the action, but all lien claimants served with the notice of trial shall for all purposes be deemed to be parties to the action.

Motion  
to speed  
trial

(6) After the commencement of the action, any lien claimant or other person interested may apply to the judge having jurisdiction to try the action or, in the County of York, a judge of the Supreme Court to speed the trial of the action. R.S.O. 1960, c. 233, s. 29, *amended*.

Lien  
claimants  
joining in  
action

**30.** Any number of lien claimants claiming liens on the same land may join in an action, and an action brought by a lien claimant shall be deemed to be brought on behalf of himself and all other lien claimants. R.S.O. 1960, c. 233, s. 30, *amended*.

Tribunal  
and place  
of trial

**31.**—(1) Except in the County of York, the action shall be tried by the local judge of the Supreme Court in the county or district in which the action was commenced, but,

SECTION 29. No change in principle from the present Act.

SECTION 31. The O.L.R.C. Supp. Rep., p. 10, recommends that as there is no relationship between subsections 1 and 2 of section 31 of Bill 190, subsection 1 should be renumbered as section 31, subsections 2 to 7 renumbered as subsections 1 to 6 of a new section 32 and the following sections renumbered accordingly. This recommendation is implemented.



upon the application of any party or other interested person made according to the practice of the Supreme Court and upon notice, the court may direct that the action be tried by a judge of the Supreme Court at the regular sittings of the court for the trial of actions in the county or district in which the action was commenced. R.S.O. 1960, c. 233, s. 31 (1, 2).

(2) In the County of York, the action shall be tried by a judge of the Supreme Court, but,

*Idem*,  
York  
County

(a) on motion after defence or defence to counterclaim, if any, has been delivered or the time for such delivery has expired, a judge of the Supreme Court may refer the whole action to the master for trial pursuant to section 69 of *The Judicature Act*; or

R.S.O. 1960,  
c. 197

(b) at the trial, a judge of the Supreme Court may direct a reference to the master pursuant to section 68 or 69 of *The Judicature Act*. R.S.O. 1960, c. 233, s. 31 (3),

R.S.O. 1960,  
c. 197

*amended*.

(3) Where on motion the whole action is referred to the master for trial, any person brought into the proceedings subsequent thereto and served with a notice of trial may apply to a judge of the Supreme Court to set aside the judgment directing the reference within seven days after service of notice of trial and, if such person fails to make such application, he is bound by such judgment as if he were originally a party thereto.

Application  
to set aside  
judgment  
directing a  
reference

(4) Where the action is referred to the master for trial, he may grant leave to amend any pleading. R.S.O. 1960, c. 233, s. 31 (4, 5).

Amend-  
ment of  
pleadings  
on reference

**32.** The local judges of the Supreme Court and the master to whom a reference for trial has been directed, in addition to their ordinary powers, have all the jurisdiction, powers and authority of the Supreme Court to try and completely dispose of the action and questions arising therein and all questions of set-off and counterclaim arising under the building contract or out of the work done or materials furnished to the property in question. R.S.O. 1960, c. 233, s. 32 (1), *amended*.

Powers of  
local  
judges  
S.C.O., etc.

**33.** Where an owner enters into an entire contract for the supply of materials to be used in several buildings, the person supplying the materials may ask to have his lien follow the form of the contract and that it be for an entire sum upon all the buildings, but, in case the owner has sold one or more of the buildings, the judge or officer trying the action has juris-

Where con-  
tract covers  
several  
buildings



diction equitably to apportion against the respective buildings the amount included in the claim for lien under the entire contract. R.S.O. 1960, c. 233, s. 32 (2), *amended*.

Power to  
appoint a  
receiver of  
rents and  
profits

**34.—**(1) At any time after the delivery of the statement of claim, the judge or officer having jurisdiction to try the action may, on the application of any lien claimant, mortgagee or other person interested, appoint a receiver of the rents and profits of the property against which the claim for lien is registered, upon such terms and upon the giving of such security or without security as the judge or officer deems just.

Power to  
direct  
sale and  
appoint  
trustee

(2) Any lien claimant, mortgagee or other person interested may make an application to the judge or officer at any time before or after judgment, which may hear *viva voce* or affidavit evidence or both and appoint, upon such terms and upon the giving of such security or without security as the judge or officer deems just, a trustee or trustees with power to manage, mortgage, lease and sell, or manage, mortgage, lease or sell, the property against which the claim for lien is registered, and the exercise of such powers shall be under the supervision and direction of the judge or officer, and with power, when so directed by the judge or officer, to complete or partially complete the property, and, in the event that mortgage moneys are advanced to the trustee or trustees as the result of any of the powers conferred upon him or them under this subsection, such moneys take priority over every claim of lien existing as of the date of the appointment.

Property  
offered for  
sale

(3) Any property directed to be sold under subsection 2 may be offered for sale subject to any mortgage or other charge or encumbrance if the judge or officer so directs.

Proceeds  
to be paid  
into court

(4) The proceeds of any sale made by a trustee or trustees under subsection 2 shall be paid into court and are subject to the claims of all lien claimants, mortgagees or other persons interested in the property so sold as their respective rights are determined, and, in so far as applicable, section 39 applies.

Orders for  
completion  
of sale

(5) The judge or officer shall make all necessary orders for the completion of any mortgage, lease or sale authorized to be made under subsection 2.

Vesting  
of title

(6) Any vesting order made of property sold by a trustee or trustees appointed under subsection 2 vests the title of the property free from all claims for liens, encumbrances and interests of any kind including dower, except in cases where sale is made subject to any mortgage, charge, encumbrance or interest as hereinbefore provided, but nothing in this

SECTION 34—Subsection 2. As recommended by the O.L.R.C. Supp. Rep., p. 10, the powers that trustees may exercise under the section are broadened to include, if authorized by court order, the power to lease the property against which the claim for lien is registered.

Subsection 3. The words "but only in cases where there is no dispute as to the priority of any such mortgage" at the end of the provision as it appeared in Bill 190 have been deleted as recommended by the O.L.R.C. Supp. Rep., p. 11. This will expedite the trial of mechanics' lien actions by giving the court power to direct a sale under the court's supervision in cases where the priority of a mortgage is in dispute or where the lien claimants refuse to take a position one way or the other.



diction equitably to apportion against the respective buildings the amount included in the claim for lien under the entire contract. R.S.O. 1960, c. 233, s. 32 (2), *amended*.

Power to  
appoint a  
receiver of  
rents and  
profits

**34.—(1)** At any time after the delivery of the statement of claim, the judge or officer having jurisdiction to try the action may, on the application of any lien claimant, mortgagee or other person interested, appoint a receiver of the rents and profits of the property against which the claim for lien is registered, upon such terms and upon the giving of such security or without security as the judge or officer deems just.

Power to  
direct  
sale and  
appoint  
trustee

(2) Any lien claimant, mortgagee or other person interested may make an application to the judge or officer at any time before or after judgment, which may hear *viva voce* or affidavit evidence or both and appoint, upon such terms and upon the giving of such security or without security as the judge or officer deems just, a trustee or trustees with power to manage, mortgage, lease and sell, or manage, mortgage, lease or sell, the property against which the claim for lien is registered, and the exercise of such powers shall be under the supervision and direction of the judge or officer, and with power, when so directed by the judge or officer, to complete or partially complete the property, and, in the event that mortgage moneys are advanced to the trustee or trustees as the result of any of the powers conferred upon him or them under this subsection, such moneys take priority over every claim of lien existing as of the date of the appointment.

Property  
offered for  
sale

(3) Any property directed to be sold under subsection 2 may be offered for sale subject to any mortgage or other charge or encumbrance if the judge or officer so directs.

Proceeds  
to be paid  
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(6) Any vesting order made of property sold by a trustee or trustees appointed under subsection 2 vests the title of the property free from all claims for liens, encumbrances and interests of any kind including dower, except in cases where sale is made subject to any mortgage, charge, encumbrance or interest as hereinbefore provided, but nothing in this

SECTION 34—Subsection 2. As recommended by the O.L.R.C. Supp. Rep., p. 10, the powers that trustees may exercise under the section are broadened to include, if authorized by court order, the power to lease the property against which the claim for lien is registered.

Subsection 3. The words "but only in cases where there is no dispute as to the priority of any such mortgage" at the end of the provision as it appeared in Bill 190 have been deleted as recommended by the O.L.R.C. Supp. Rep., p. 11. This will expedite the trial of mechanics' lien actions by giving the court power to direct a sale under the court's supervision in cases where the priority of a mortgage is in dispute or where the lien claimants refuse to take a position one way or the other.



section or elsewhere in this Act shall be deemed to extinguish the right to dower, if any, of any married woman or the right to have the value of her dower ascertained and deducted from the proceeds of the sale so paid into court. R.S.O. 1960, c. 233, s. 32 (3-8), *amended*.

**35.** At any time after delivery of the statement of claim and before judgment, or after judgment and pending the hearing and determination of any appeal, any lien claimant, mortgagee or other interested person may make an application to the judge or officer having jurisdiction to try the action, who may hear *viva voce* or affidavit evidence or both and make an order for the preservation of any property pending the determination of the action and any appeal. *New*.

Order for  
preserva-  
tion of  
property

**36.** Where more actions than one are brought to realize liens in respect of the same land, the judge or officer having jurisdiction to try the action may, on the application of any party to any one of the actions or on the application of any other person interested, consolidate all such actions into one action and award the conduct of the consolidated action to any plaintiff as the judge or officer deems just. R.S.O. 1960, c. 233, s. 33, *amended*.

Consolida-  
tion of  
actions

**37.** Any lien claimant entitled to the benefit of an action may at any time apply to the judge or officer having jurisdiction to try the action for the carriage of the proceedings, and the judge or officer may make an order awarding such lien claimant the carriage of the proceedings. R.S.O. 1960, c. 233, s. 34, *amended*.

Transferring  
carriage of  
proceedings

**38.**—(1) After the delivery of the statement of defence where the plaintiff's claim is disputed, or after the time for delivery of defence in all other cases, either party may apply *ex parte* to a judge or officer having jurisdiction to try the action to fix a day for the trial thereof, and the judge or officer shall appoint the time and place of trial, and the order, signed by the judge or officer, shall form part of the record of the proceedings.

Appointing  
day for  
trial

(2) The party obtaining an appointment for the trial shall, at least ten clear days before the day appointed, serve notice of trial upon the solicitors for the defendants who appear by solicitors and upon the defendants who appear in person, and upon all the lienholders who have registered their claims as required by this Act or of whose claims he has notice, and upon all other persons having any charge, encumbrance or claim on the land subsequent in priority to the lien, who are not parties, and such service shall be personal unless otherwise directed by the judge or officer who may direct in what manner the notice of trial is to be served.

Notice of  
trial and  
service

Idem

(3) Where any person interested in the land has been served with a statement of claim and makes default in delivering a statement of defence, he shall nevertheless be served with notice of trial and is entitled to defend on such terms as to costs and otherwise as the judge or officer having jurisdiction to try the action deems just.

Trial

(4) The judge, or where a reference for trial is directed, the master,

(a) shall try the action, including any set-off and counter-claim, and all questions that arise therein or that are necessary to be tried in order to completely dispose of the action and to adjust the rights and liabilities of the persons appearing before him or upon whom notice of trial has been served;

(b) shall take all accounts, make all inquiries, give all directions and do all other things necessary to finally dispose of the action and of all matters, questions and accounts arising therein or at the trial, and to adjust the rights and liabilities of and give all necessary relief to all parties to the action and all persons who have been served with the notice of trial; and

(c) shall embody the results of the trial,

(i) in the case of a judge, in a judgment, and

(ii) in the case of a master, in a report,

which judgment or report may direct payment forthwith by the person or persons primarily liable to pay the amount of the claims and costs as ascertained by the judgment or report, and execution may be issued therefor forthwith in the case of a judgment and after confirmation thereof, in the case of a report.

Power to  
vary form of  
judgment

(5) The form of the judgment or report may be varied by the judge or officer in order to meet the circumstances of the case so as to afford to any party to the proceedings any right or remedy in the judgment or report to which he may be entitled.

Sale

(6) The judge or officer may order that the estate or interest charged with the lien be sold, and may direct the sale to take place at any time after judgment or confirmation of the report, allowing, however, a reasonable time for advertising the sale.

Letting in  
lien  
claimants  
who have  
not proved  
their claims  
at trial

(7) A lien claimant who did not prove his claim at the trial, on application to the judge or officer before whom the action or reference was tried, may be let in to prove his claim, on



such terms as to costs and otherwise as are deemed just, at any time before the amount realized in the action for the satisfaction of liens has been distributed, and, where his claim is allowed, the judgment or report shall be amended so as to include his claim.

(8) Any lien claimant for an amount not exceeding \$200 may be represented by an agent who is not a barrister and solicitor. Right of lien claimants to representation

(9) An action or reference under this Act may be tried by any judge or officer having jurisdiction to try the action or reference notwithstanding that the time and place for the trial or reference thereof were appointed and fixed by another judge or officer. R.S.O. 1960, c. 233, s. 35, *amended*. Action may be tried by any judge

(10) Any party to an action under this Act or any other interested person may at any time and from time to time apply to a judge or officer having jurisdiction to try the action or reference for directions as to pleadings, discovery, production or any other matter relating to the action or reference, including the cross-examination of a lien claimant or his agent or assignee on his affidavit verifying the claim. *New*. Applications for directions

**39.**—(1) Where a sale is had, the moneys arising therefrom shall be paid into court to the credit of the action, and the judge or officer before whom the action was tried shall direct to whom the moneys in court shall be paid and may add to the claim of the person conducting the action his fees and actual disbursements incurred in connection with the sale, and, where sufficient to satisfy the judgment and costs is not realized from the sale, he shall certify the amount of the deficiency and the names of the persons who are entitled to recover the same, showing the amount that each is entitled to recover and the persons adjudged to pay the same, giving credit for payments made, if any, under subsection 4 of section 38, and the persons so entitled may enforce payment of the amounts so found to be due by execution or otherwise. Report where sale is had

(2) The judge or officer before whom the action was tried may make all necessary orders for the completion of the sale and for vesting the property in the purchaser. R.S.O. 1960, c. 233, s. 36 (1, 2). Completion of sale

**40.** Where a lien claimant fails to establish a lien, he may nevertheless recover a personal judgment against any party to the action for such sum as may appear to be due to him and which he might recover in an action against such party. R.S.O. 1960, c. 233, s. 36 (3). Where lien not established

Right of  
lienholders  
whose claims  
are not  
payable to  
share in  
proceeds

**41.** Where property subject to a lien is sold in an action to enforce a lien, every lienholder is entitled to share in the proceeds of the sale in respect of the amount then owing to him, although the same or part thereof was not payable at the time of the commencement of the action or is not then presently payable. R.S.O. 1960, c. 233, s. 37.

#### STATED CASE

Stated case

**42.**—(1) If in the course of proceedings to enforce a lien a question of law arises, the judge or officer trying the case may, at the request of any party, state the question in the form of a stated case for the opinion of the Court of Appeal, and the stated case shall thereupon be set down to be heard before the Court of Appeal and notice of hearing shall be served by the party setting down upon all parties concerned.

Trans-  
mission of  
papers

(2) The stated case shall set forth the facts material for the determination of the question raised, and all papers necessary for the hearing of the stated case by the Court of Appeal shall be transmitted to the registrar of the Supreme Court. R.S.O. 1960, c. 233, s. 39, *amended*.

#### APPEAL

Appeal

**43.**—(1) Except where the amount of a judgment in respect of a claim or counterclaim is \$200 or less, an appeal lies from any judgment under this Act to the Court of Appeal. R.S.O. 1960, c. 233, s. 40 (1), *amended*.

Appeal from  
reference

(2) Where a question is referred to the master for inquiry and report under subsection 2 of section 31, an appeal lies in the manner prescribed by the rules of court.

Confirma-  
tion of  
master's  
report

(3) Where an action is referred to the master for trial under subsection 2 of section 31, the report shall be filed and shall be deemed to be confirmed at the expiration of fifteen days from the date of service of notice of filing the same, unless notice of appeal is served within that time.

Appeal  
from  
judgment  
or report

(4) An appeal from a judgment or report made on a reference for trial lies in like manner and to the same extent as from the decision of a judge trying an action in the Supreme Court without a jury. R.S.O. 1960, c. 233, s. 40 (2, 3, 4).

Costs of  
appeal

(5) The costs of an appeal shall not be governed by subsections 2 and 3 of section 45 but, subject to any order of the Court of Appeal, shall be upon the scale of costs allowed in county court appeals where the amount involved is within the proper competence of the county court, and, where it exceeds that amount, upon the Supreme Court scale. R.S.O. 1960, c. 233, s. 40 (5), *amended*.



SECTION 43—Subsection 1. The limitation on appeals that is in the present Act but was not in Bill 190 appears at the commencement of this provision as recommended by the O.L.R.C. Supp. Rep., p. 11.

SECTION 45. The intent is clarified as recommended by the O.L.R.C.  
Supp. Rep., p. 11.

## FEES AND COSTS

**44.** The fee payable by every plaintiff, every plaintiff by <sup>Fee</sup> counterclaim and every lien claimant, including every person recovering a personal judgment, in any action to realize a lien under this Act is,

- (a) \$5 on a claim or counterclaim not exceeding \$500;
- (b) \$10 on a claim or counterclaim exceeding \$500 but not exceeding \$1,000;
- (c) \$10 on a claim or counterclaim exceeding \$1,000, plus \$1 for every \$1,000 or fraction thereof in excess of \$1,000,

but no fee is payable on a claim for wages only, and in no case shall the fee on a claim exceed \$75 or on a counterclaim exceed \$25. R.S.O. 1960, c. 233, s. 41, *amended*.

**45.**—(1) Subject to subsections 2, 3, 4 and 5, any order as to costs in an action under this Act is in the discretion of the judge or officer who tries the action. R.S.O. 1960, c. 233, s. 46, *amended*. <sup>Costs not otherwise provided for</sup>

(2) The costs of the action, exclusive of actual disbursements, awarded to the plaintiffs and successful lienholders, shall not exceed in the aggregate 25 per cent of the total amount found to have been actually due on the liens at the time of the registration thereof, and shall be apportioned and borne in such proportion as the judge or officer who tries the action may direct, but in making the apportionment he shall have regard to the actual services rendered by or on behalf of the parties respectively, provided that, where a counterclaim is set up by a defendant, the amount and apportionment of the costs in respect thereof are in the discretion of the judge or officer who tries the action. R.S.O. 1960, c. 233, s. 42, *amended*. <sup>Limit of costs to plaintiffs</sup>

(3) Where costs are awarded against the plaintiff or other persons claiming liens, they shall not exceed, except in the case of a counterclaim, 25 per cent of the claim of the plaintiff and the other claimants, besides actual disbursements, and shall be apportioned and borne as the judge or officer who tries the action may direct. R.S.O. 1960, c. 233, s. 43, *amended*. <sup>Limit of costs against plaintiffs</sup>

(4) Where the least expensive course is not taken by a plaintiff, the costs allowed to him shall in no case exceed what would have been incurred if the least expensive course had been taken. R.S.O. 1960, c. 233, s. 44. <sup>Costs where least expensive course not taken</sup>

Cost of  
drawing and  
registering  
and vacating  
registration  
of lien

(5) Where a lien is discharged or vacated under section 25 or where judgment is given in favour of or against a claim for a lien, in addition to the costs of the action, the judge or officer who tries the action may allow a reasonable amount for the costs of drawing and registering the claim for lien or of vacating the registration thereof, but this does not apply where the claimant fails to establish a valid lien. R.S.O. 1960, c. 233, s. 45.

#### RULES OF PRACTICE

Rules of  
practice

**46.**—(1) The object of this Act being to enforce liens at the least expense, the procedure shall be as far as possible of a summary character, having regard to the amount and nature of the liens in question. R.S.O. 1960, c. 233, s. 47 (1).

Interlocu-  
tory proceed-  
ings

(2) Except where otherwise provided by this Act, no interlocutory proceedings shall be permitted without the consent of the judge or officer having jurisdiction to try the action, and then only upon proper proof that such proceedings are necessary.

Assistance  
of experts

(3) The judge or officer having jurisdiction to try the action may obtain the assistance of any merchant, accountant, actuary, building contractor, architect, engineer or person in such way as he deems fit, the better to enable him to determine any matter of fact in question, and may fix the remuneration of any such person and direct payment thereof by any of the parties. R.S.O. 1960, c. 233, s. 47 (2, 3), *amended*.

Rules of  
practice

(4) Unless otherwise provided in this Act, the Rules of Practice and Procedure of the Supreme Court apply to proceedings under this Act. *New*.

#### SERVICE OF DOCUMENTS

Service of  
documents

**47.** Except where otherwise directed by the judge or officer having jurisdiction to try the action, all documents relating to an action under this Act, other than statements of claim and notices of trial, are sufficiently served upon the intended recipient if sent by registered mail addressed to the intended recipient at his address for service. *New*.

#### LIENS ON CHATTELS

Right of  
chattel  
lienholder  
to sell  
chattel

**48.**—(1) Every person who has bestowed money, skill or materials upon any chattel or thing in the alteration or improvement of its properties or for the purpose of imparting an additional value to it, so as thereby to be entitled to a lien upon the chattel or thing for the amount or value of the money or skill and material bestowed, has, while the lien exists but not afterwards, in case the amount to which he is entitled remains

SECTION 46—Subsection 4. This new provision implements a recommendation of the O.L.R.C. Supp. Rep., p. 11.



unpaid for three months after it ought to have been paid, the right, in addition to any other remedy to which he may be entitled, to sell by auction the chattel or thing on giving one week's notice by advertisement in a newspaper having general circulation in the municipality in which the work was done, setting forth the name of the person indebted, the amount of the debt, a description of the chattel or thing to be sold, the time and place of sale, and the name of the auctioneer, and leaving a like notice in writing at the last known place of residence, if any, of the owner, if he is a resident of the municipality.

(2) Such person shall apply the proceeds of the sale in payment of the amount due to him and the costs of advertising and sale and shall upon application pay over any surplus to the person entitled thereto. R.S.O. 1960, c. 233, s. 48, *amended*. Application  
of proceeds  
of sale

#### FORMS

**49.** The Lieutenant Governor in Council may make regulations prescribing forms and providing for their use. *New.* Forms

#### MISCELLANEOUS

**50.** *The Mechanics' Lien Act, The Mechanics' Lien Amendment Act, 1961-62, The Mechanics' Lien Amendment Act, 1962-63 and The Mechanics' Lien Amendment Act, 1966* are repealed. R.S.O. 1960,  
c. 233;  
1961-62,  
c. 78;  
1962-63,  
c. 79;  
1966, c. 84,  
repealed

**51.** This Act comes into force on a day to be named by the Lieutenant Governor by his proclamation. Commence-  
ment

**52.** This Act may be cited as *The Mechanics' Lien Act*, Short title  
*1968-69.*



The Mechanics' Lien Act, 1968-69

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*1st Reading*

December 12th, 1968

*2nd Reading*

February 20th, 1969

*3rd Reading*

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MR. WISHART

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(Reprinted as amended by  
the Committee of the Whole House)

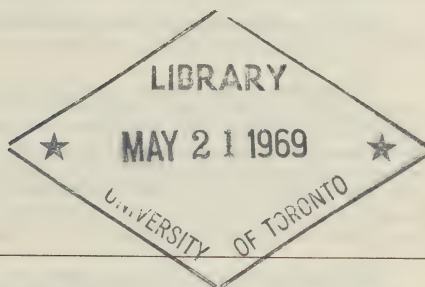
**BILL 36**

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

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**The Mechanics' Lien Act, 1968-69**



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MR. WISHART

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*(Reprinted as amended by the Legal and Municipal Committee)*

#### EXPLANATORY NOTES

GENERAL. In 1965 the Ontario Law Reform Commission undertook an extensive study of the law in Ontario on mechanics' liens.

A report dated February 22, 1966, was made by the Commission to the Attorney General containing its recommendations for up-dating *The Mechanics' Lien Act*.

Bill 190, based upon the report, was introduced and given first reading at the 1966 Session. This gave the proposed legislation wide distribution in convenient form for study by interested persons and organizations.

The Commission then held public hearings and considered many submissions which resulted in a supplementary report dated May 26, 1967.

The recommendations of the Commission contained in the supplementary report have been incorporated in this Bill. There is, however, one major exception. This Bill does not transfer jurisdiction in mechanics' lien actions from the Supreme Court to the county and district courts as recommended by the Commission in both of its reports. It is thought advisable to leave this matter in abeyance pending the conclusion of the general review of the jurisdictions of the several court systems in Ontario now going on as a result of the recommendations of the McRuer Report.

This Bill also contains a number of editorial and other changes, designed to clarify the intent, that have resulted from the study of Bill 190.

In the following notes the supplementary report of the Commission is referred to as O.L.R.C. Supp. Rep.

### The Mechanics' Lien Act, 1968-69

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Interpre-  
tation

- (a) "completion of the contract" means substantial performance, not necessarily total performance, of the contract;
- (b) "contractor" means a person contracting with or employed directly by the owner or his agent for the doing of work or the placing or furnishing of materials for any of the purposes mentioned in this Act;
- (c) "materials" includes every kind of movable property;
- (d) "owner" includes any person and corporation, including a municipal corporation and a railway company, having any estate or interest in the land upon which or in respect of which work is done or materials are placed or furnished, at whose request, and
  - (i) upon whose credit, or
  - (ii) on whose behalf, or
  - (iii) with whose privity or consent, or
  - (iv) for whose direct benefit,

work is done or materials are placed or furnished and all persons claiming under him or it whose rights are acquired after the work in respect of which the lien is claimed is commenced or the materials placed or furnished have been commenced to be placed or furnished;

- (e) "registrar" includes a master of titles;
- (f) "registry office" includes a land titles office;

(g) "subcontractor" means a person not contracting with or employed directly by the owner or his agent for any of the purposes mentioned in this Act, but contracting with or employed by a contractor or, under him, by another subcontractor;

(h) "wages" means the money earned by a workman for work done by time or as piece work, and includes all monetary supplementary benefits, whether by statute, contract or collective bargaining agreement;

(i) "workman" means a person employed for wages in any kind of labour, whether employed under a contract of service or not. R.S.O. 1960, c. 233, s. 1, *amended*.

Work  
includes  
service

(2) In this Act, the expression "the doing of work" includes the performance of a service, and corresponding expressions have corresponding meanings.

Substantial  
performance

(3) For the purposes of this Act, a contract shall be deemed to be substantially performed,

(a) when the work or a substantial part thereof is ready for use or is being used for the purpose intended; and

(b) when the work to be done under the contract is capable of completion or correction at a cost of not more than,

(i) 3 per cent of the first \$250,000 of the contract price,

(ii) 2 per cent of the next \$250,000 of the contract price, and

(iii) 1 per cent of the balance of the contract price.

Idem

(4) For the purposes of this Act, where the work or a substantial part thereof is ready for use or is being used for the purpose intended and where the work cannot be completed expeditiously for reasons beyond the control of the contractor, the value of the work to be completed shall be deducted from the contract price in determining substantial performance. *New.*

#### GENERAL

Trust funds  
in hands of  
contractors

2.—(1) All sums received by a builder, contractor or subcontractor on account of the contract price constitute a trust fund in his hands for the benefit of the owner, builder, contractor, subcontractor, Workmen's Compensation Board,

SECTION 1—Subsections 3 and 4 are new. They are designed to complement the definition of “completion of the contract” and thus speed up the release of “holdback” moneys.

Subsection 4. Municipal financing is expressly excluded from the scope of the provision and its intent is clarified as recommended in O.L.R.C. Supp. Rep., pp. 6, 7.



workmen, and persons who have supplied materials on account of the contract or who have rented equipment to be used on the contract site, and the builder, contractor or subcontractor, as the case may be, is the trustee of all such sums so received by him and he shall not appropriate or convert any part thereof to his own use or to any use not authorized by the trust until all workmen and all persons who have supplied materials on the contract or who have rented equipment to be used on the contract site and all subcontractors are paid for work done or materials supplied on the contract and the Workmen's Compensation Board is paid any assessment with respect thereto. R.S.O. 1960, c. 233, s. 3 (1), *amended*.

(2) Notwithstanding subsection 1, where a builder, contractor or subcontractor has paid in whole or in part for any materials supplied on account of the contract or for any rented equipment or has paid any workman who has performed any work or any subcontractor who has placed or furnished any materials in respect of the contract, the retention by such builder, contractor or subcontractor of a sum equal to the sum so paid by him shall be deemed not to be an appropriation or conversion thereof to his own use or to any use not authorized by the trust. R.S.O. 1960, c. 233, s. 3 (3), *amended*. Exception

(3) Where a sum becomes payable under a contract to a contractor by an owner on the certificate of a person authorized under the contract to make such a certificate, an amount equal to the sum so certified that is in the owner's hands or received by him at any time thereafter shall, until paid to the contractor, constitute a trust fund in the owner's hands for the benefit of the contractor, subcontractor, Workmen's Compensation Board, workmen, and persons who have supplied materials on account of the contract or who have rented equipment to be used on the contract site, and the owner shall not appropriate or convert any part thereof to his own use or to any use not authorized by the trust until all workmen and all persons who have supplied materials on the contract or who have rented equipment to be used on the contract site and all contractors and subcontractors are paid for work done or materials supplied on the contract and the Workmen's Compensation Board is paid any assessment with respect thereto. Trust funds in hands of owners

(4) All sums received by an owner, other than a municipality as defined in *The Department of Municipal Affairs Act* or a metropolitan or regional municipality or a local board thereof, which are to be used in the financing, including the purchase price of the land and the payment of prior encumbrances, of a building, structure or work, constitute, subject to the payment of the purchase price of the land and prior Advances on mortgage, etc., a trust fund  
R.S.O. 1960, c. 98

encumbrances, a trust fund in the hands of the owner for the benefit of the persons mentioned in subsection 1, and, until the claims of all such persons have been paid, the owner shall not appropriate or convert any part thereof to his own use or to any use not authorized by the trust.

**Exception**

(5) Notwithstanding subsection 4, where an owner has himself paid in whole or in part for any work done, for any materials placed or furnished or for any rented equipment, the retention by him from any moneys received from the lender under subsection 4 of a sum equal to the sum so paid by him shall be deemed not to be an appropriation or conversion thereof to his own use or to any use not authorized by the trust.

**Protection for money lenders**

(6) Notwithstanding anything in this section, where money is lent to a person upon whom a trust is imposed by this section and is used by him to pay in whole or in part for any work done, for any materials placed or furnished or for any rented equipment, trust moneys may be applied to discharge the loan to the extent that the lender's money was so used by the trustee, and any sum so applied shall be deemed not to be an appropriation or conversion to the trustee's own use or to any use not authorized by the trust. *New.*

**Offence and penalty**

(7) Every person upon whom a trust is imposed by this section who knowingly appropriates or converts any part of any trust moneys referred to in subsection 1, 3 or 4 to his own use or to any use not authorized by the trust is guilty of an offence and on summary conviction is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than two years, or to both, and every director or officer of a corporation who knowingly assents to or acquiesces in any such offence by the corporation is guilty of such offence, in addition to the corporation, and on summary conviction is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than two years, or to both. R.S.O. 1960, c. 233, s. 3 (2), *amended*.

**Limit of time for asserting claims to trust moneys**

**3.** No action to assert any claim to trust moneys referred to in section 2 shall be commenced against a lender of money to a person upon whom a trust is imposed by that section except,

- (a) in the case of a claim by a contractor or subcontractor in cases not provided for in clauses *b*, *c* and *d*, within nine months after the completion or abandonment of the contract or subcontract;
- (b) in the case of a claim for materials, within nine months after the placing or furnishing of the last material;

Subsection 5. This extension of the "trustee provisions" is new. It is recommended in O.L.R.C. Supp. Rep., pp. 5-7.

SECTION 4—Subsection 2, clause *b*. In its original report the Ontario Law Reform Commission recommended "\$25 a day" which is the sum that appeared in Bill 190.

As a result of further submissions and consideration, the Commission recommends \$35 a day. See O.L.R.C. Supp. Rep., p. 7. The Committee on Legal and Municipal Bills raised it to \$50 a day.

(c) in the case of a claim for services, within nine months after the completion of the service; or

(d) in the case of a claim for wages, within nine months after the last work was done for which the claim is made. *New.*

4.—(1) Every agreement, oral or written, express or implied, on the part of any workman that this Act does not apply to him or that the remedies provided by it are not available for his benefit is void. Agreements waiving application of Act are void

(2) Subsection 1 does not apply,

Exception

(a) to a manager, officer or foreman; or

(b) to any person whose wages are more than \$50 a day.

(3) No agreement deprives any person otherwise entitled to a lien under this Act, who is not a party to the agreement, of the benefit of the lien, but it attaches, notwithstanding such agreement. R.S.O. 1960, c. 233, s. 4, *amended*. Effect upon third party of agreement waiving lien

#### CREATION OF LIENS

5.—(1) Unless he signs an express agreement to the contrary and in that case subject to section 4, any person who does any work upon or in respect of, or places or furnishes any materials to be used in, the making, constructing, erecting, fitting, altering, improving or repairing of any land, building, structure or works or the appurtenances to any of them for any owner, contractor or subcontractor by virtue thereof has a lien for the price of the work or materials upon the estate or interest of the owner in the land, building, structure or works and appurtenances and the land occupied thereby or enjoyed therewith, or upon or in respect of which the work is done, or upon which the materials are placed or furnished to be used, limited, however, in amount to the sum justly due to the person entitled to the lien and to the sum justly owing, except as herein provided, by the owner, and the placing or furnishing of the materials to be used upon the land or such other place in the immediate vicinity of the land designated by the owner or his agent is good and sufficient delivery for the purpose of this Act, but delivery on the designated land does not make such land subject to a lien. General right to a lien

(2) Except for the purpose of section 11, the lien given by subsection 1 does not attach to any public street or highway or to any work or improvement done thereon. Exception



Lien  
attaches  
where  
materials  
incorporated  
into  
building

(3) The lien given by subsection 1 attaches as therein set out where the materials delivered to be used are incorporated into the land, building, structure or works, notwithstanding that the materials may not have been delivered in strict accordance with subsection 1.

Interpre-  
tation

(4) In subsection 1, "agent" includes the contractor or subcontractor for whom the materials are placed or furnished, unless the person placing or furnishing the materials has had actual notice from the owner to the contrary. R.S.O. 1960, c. 233, s. 5, *amended*.

Lien for  
rented  
equipment

(5) A person who rents equipment to an owner, contractor or subcontractor for use on a contract site shall be deemed for the purposes of this Act to have performed a service for which he has a lien for the price of the rental of the equipment used on the contract site, limited, however in amount to the sum justly owed and due to the person entitled to the lien from the owner, builder, contractor or subcontractor in respect of the rental of the equipment. *New*.

When  
husband's  
interest  
liable for  
work done  
or materials  
furnished  
on land of  
spouse

6. Where work is done or materials are placed or furnished to be used upon or in respect of the land of a married woman, or in which she has an interest or an inchoate right of dower, with the privity or consent of her husband, he shall be presumed conclusively to be acting as her agent as well as for himself for the purposes of this Act unless before doing the work or placing or furnishing the materials the person doing the work or placing or furnishing the materials has had actual notice to the contrary. R.S.O. 1960, c. 233, s. 6, *amended*.

Where estate  
charged is  
leasehold

7.—(1) Where the estate or interest upon which the lien attaches is leasehold, the fee simple is also subject to the lien if the person doing the work or placing or furnishing the materials gives notice in writing, by personal service, to the owner in fee simple or his agent of the work to be done or materials to be placed or furnished unless the owner in fee simple or his agent within fifteen days thereafter gives notice in writing, by personal service, to such person that he will not be responsible therefor.

Forfeiture  
or cancella-  
tion of  
lease, effect  
of on lien-  
holder

(2) No forfeiture or attempted forfeiture of the lease on the part of the landlord, or cancellation or attempted cancellation of the lease except for non-payment of rent, deprives any person otherwise entitled to a lien of the benefit of the lien, but the person entitled to the lien may pay any rent accruing after he becomes so entitled, and the amount so paid may be added to his claim.

SECTION 5—Subsection 5. The intent of the original recommendation of the Ontario Law Reform Commission is clarified. It is intended that the lien for rented equipment is for an amount that is reasonable and justly due in the particular circumstances. See O.L.R.C. Supp. Rep., p. 8.

SECTION 7—Subsection 1. The intent is clarified. See O.L.R.C. Supp. Rep., p. 8. Also, the notice period is increased from ten to fifteen days.





(3) Where the land and premises upon or in respect of which any work is done or materials are placed or furnished are encumbered by a mortgage or other charge that was registered in the proper registry office before any lien under this Act arose, the mortgage or other charge has priority over all liens under this Act to the extent of the actual value of the land and premises at the time the first lien arose, such value to be ascertained by the judge or officer having jurisdiction to try an action under this Act. <sup>Prior mortgages</sup>

(4) The time at which the first lien arose shall be deemed to be the time at which the first work was done or the first materials placed or furnished, irrespective of whether a claim for lien in respect thereof is registered or enforced and whether or not such lien is before the court. R.S.O. 1960, c. 233, s. 7 (1-4), *amended*. <sup>When first lien arose</sup>

(5) Any mortgage existing as a valid security, notwithstanding that it is a prior mortgage within the meaning of subsection 3, may also secure future advances, subject to subsection 1 of section 14. R.S.O. 1960, c. 233, s. 7 (5). <sup>Future advances</sup>

(6) A registered agreement for the sale and purchase of land and any moneys *bona fide* secured or payable thereunder has the same priority over a lien as is provided for a mortgage and mortgage moneys in subsections 3 and 5, and for the purposes of this Act the seller shall be deemed to be a mortgagee, and any moneys *bona fide* secured and payable under such agreement shall be deemed to be mortgage moneys *bona fide* secured or advanced. R.S.O. 1960, c. 233, s. 7 (6), *amended*. <sup>Registered agreement for sale and purchase of land has same priority as mortgage</sup>

8. Where any of the property upon which a lien attaches is wholly or partly destroyed by fire, any money received by reason of any insurance thereon by an owner or prior mortgagee or chargee shall take the place of the property so destroyed and is, after satisfying any prior mortgage or charge in the manner and to the extent set out in subsection 3 of section 7, subject to the claims of all persons for liens to the same extent as if the money had been realized by a sale of the property in an action to enforce the lien. R.S.O. 1960, c. 233, s. 8. <sup>Application of insurance</sup>

9. Save as herein otherwise provided, the lien does not attach so as to make the owner liable for a greater sum than the sum payable by the owner to the contractor. R.S.O. 1960, c. 233, s. 9. <sup>Limit of amount of owner's liability</sup>

Limit of  
lien when  
claimed by  
other  
than con-  
tractor

**10.** Save as herein otherwise provided, where the lien is claimed by any person other than the contractor, the amount that may be claimed in respect thereof is limited to the amount owing to the contractor or subcontractor or other person for whom the work has been done or the materials were placed or furnished. R.S.O. 1960, c. 233, s. 10, *amended*.

Holdback

**11.**—(1) In all cases, the person primarily liable upon a contract under or by virtue of which a lien may arise shall, as the work is done or the materials are furnished under the contract, retain for a period of thirty-seven days after the completion or abandonment of the work done or to be done under the contract 15 per cent of the value of the work and materials actually done, placed or furnished, as mentioned in section 5, irrespective of whether the contract or subcontract provides for partial payments or payment on completion of the work, and the value shall be calculated upon evidence given in that regard on the basis of the contract price or, if there is no specific contract price, on the basis of the actual value of the work or materials. R.S.O. 1960, c. 233, s. 11 (1), *amended*.

Reduction  
in amount  
retained

(2) Where a contract is under the supervision of an architect, engineer or other person upon whose certificate payments are to be made and thirty-seven days have elapsed after a certificate issued by that architect, engineer or other person to the effect that the subcontract has been completed to his satisfaction has been given to the person primarily liable upon that contract and to the person who became a subcontractor by a subcontract made directly under that contract, the amount to be retained by the person primarily liable upon that contract shall be reduced by 15 per cent of the subcontract price or, if there is no specific subcontract price, by 15 per cent of the actual value of the work done or materials placed or furnished under that subcontract, but this subsection does not operate if and so long as any lien derived under that subcontract is preserved by anything done under this Act.

Idem

(3) Where a certificate issued by an architect, engineer or other person to the effect that a subcontract by which a subcontractor became a subcontractor has been completed to the satisfaction of that architect, engineer or other person has been given to that subcontractor, then, for the purposes of subsections 1, 2 and 3 of section 21 and section 23, that subcontract and any materials placed or furnished or to be placed or furnished thereunder and any work done or to be done thereunder shall, so far as concerns any lien thereunder of that subcontractor, be deemed to have been completed or placed or furnished not later than the time at which the certificate was so given. R.S.O. 1960, c. 233, s. 11 (3, 4), *amended*.



(4) Where an architect, engineer or other person neglects or refuses to issue and deliver a certificate upon which payments are to be made under a contract or subcontract, the judge or officer having jurisdiction to try an action under this Act, upon application and upon being satisfied that the certificate should have been issued and delivered may, upon such terms and conditions as to costs and otherwise as he deems just, make an order that the work or materials to which the certificate would have related has been done or placed or furnished, as the case may be, and any such order has the same force and effect as if the certificate had been issued and delivered by the architect, engineer or other person. *New.*

Court order  
in lieu of  
certificate

(5) Where there is a lien under section 5, the lien is a charge upon the amount directed to be retained by this section in favour of lien claimants whose liens are derived under persons to whom the moneys so required to be retained are respectively payable and where there is no lien on the land by virtue of subsection 2 of section 5, a claim for work done or materials placed or furnished is a charge upon the amount directed to be retained by this section. R.S.O. 1960, c. 233, s. 11 (5), *amended.*

Effect of  
liens and  
claims on  
amounts  
retained

(6) All payments up to 85 per cent as fixed by subsection 1 and payments permitted as a result of the operation of subsections 2 and 3 made in good faith by an owner to a contractor, or by a contractor to a subcontractor, or by one subcontractor to another subcontractor, before notice in writing of the lien given by the person claiming the lien to the owner, contractor or subcontractor, as the case may be, operate as a discharge *pro tanto* of the lien.

Payments  
made in  
good faith  
without  
notice of  
lien

(7) Payment of the percentage required to be retained under this section may be validly made so as to discharge all claims in respect of such percentage after the expiration of the period of thirty-seven days mentioned in subsection 1 unless in the meantime proceedings have been commenced to enforce any lien or charge against the percentage as provided by sections 22 and 23, in which case the owner may pay the percentage into court in the proceedings, and such payment constitutes valid payment in discharge of the owner to the amount thereof.

Payment of  
percentage  
and  
discharge  
of liens

(8) Every contract shall be deemed to be amended in so far as is necessary to be in conformity with this section. R.S.O. 1960, c. 233, s. 11 (5-9).

Amendment  
of contracts

(9) Where the contractor or subcontractor makes default in completing his contract, the percentage required to be retained shall not, as against any lien claimant who by virtue

Where  
percentage  
not to be  
applied



of subsection 5 has a charge thereupon, be applied by the owner, contractor or subcontractor to the completion of the contract or for any other purpose nor to the payment of damages for the non-completion of the contract by the contractor or subcontractor nor in payment or satisfaction of any claim against the contractor or subcontractor. R.S.O. 1960, c. 233, s. 11 (9), *amended*.

Payments  
made  
directly  
by owner  
to persons  
entitled to  
lien

**12.** If an owner, contractor or subcontractor makes a payment to any person entitled to a lien under section 5 or to any person who but for subsection 2 of that section would be entitled to a lien under that section, for or on account of any debt, justly due to him for work done or for materials placed or furnished to be used as therein mentioned, for which he is not primarily liable, and within three days afterwards gives written notice of the payment to the person primarily liable, or his agent, the payment shall be deemed to be a payment on his contract generally to the contractor or subcontractor primarily liable but not so as to affect the percentage to be retained by the owner as provided by section 11. R.S.O. 1960, c. 233, s. 12 (1), *amended*.

Rights of  
subcon-  
tractor

**13.** Every subcontractor is entitled to enforce his lien notwithstanding the non-completion or abandonment of the contract by any contractor or subcontractor under whom he claims. R.S.O. 1960, c. 233, s. 12 (2).

Priority of  
lien

**14.—(1)** The lien has priority over all judgments, executions, assignments, attachments, garnishments and receiving orders recovered, issued or made after the lien arises, and over all payments or advances made on account of any conveyance or mortgage after notice in writing of the lien has been given to the person making such payments or after registration of a claim for the lien as hereinafter provided, and, in the absence of such notice in writing or the registration of a claim for lien, all such payments or advances have priority over any such lien. R.S.O. 1960, c. 233, s. 13 (1), *amended*.

Priority  
among  
lienholders

(2) Except where it is otherwise provided by this Act, no person entitled to a lien on any property or money is entitled to any priority or preference over another person of the same class entitled to a lien on such property or money, and each class of lienholders ranks *pari passu* for their several amounts, and the proceeds of any sale shall be distributed among them *pro rata* according to their several classes and rights.

Mortgage  
given to  
person  
entitled to  
lien void as  
against lien-  
holders

(3) Any conveyance, mortgage or charge of or on land given to any person entitled to a lien thereon under this Act in payment of or as security for any such claim, whether

given before or after such lien claim has arisen, shall, as against other parties entitled to liens under this Act, on any such land be deemed to be fraudulent and void. R.S.O. 1960, c. 233, s. 13 (2, 3).

#### PRIORITY OF WAGES

**15.**—(1) Every workman whose lien is for wages has priority to the extent of thirty days wages over all other liens derived through the same contractor or subcontractor to the extent of and on the 15 per cent directed to be retained by section 11 to which the contractor or subcontractor through whom the lien is derived is entitled, and all such workmen rank thereon *pari passu*. Priority of liens for wages

(2) Every workman is entitled to enforce a lien in respect of any contract or subcontract that has not been completed and, notwithstanding anything to the contrary in this Act, may serve a notice of motion on the proper persons, returnable in four days after service thereof before the judge or officer having jurisdiction to try an action under this Act, that the applicant will on the return of the motion ask for judgment on his claim for lien, registered particulars of which shall accompany the notice of motion duly verified by affidavit. Enforcing lien in such cases

(3) If the contract has not been completed when the lien is claimed by a workman, the percentage shall be calculated on the value of the work done or materials placed or furnished by the contractor or subcontractor by whom the workman is employed, having regard to the contract price, if any. Calculating percentage when contract not fulfilled

(4) Every device by an owner, contractor or subcontractor to defeat the priority given to a workman for his wages and every payment made for the purpose of defeating or impairing a lien are void. R.S.O. 1960, c. 233, s. 14, *amended*. Devices to defeat priority of workmen

#### REGISTRATION

**16.**—(1) A claim for a lien may be registered in the proper registry office and shall set out, Registration of claim for lien

- (a) the name and an address for service of the person claiming the lien and of the owner or of the person whom the person claiming the lien, or his agent, believes to be the owner of the land, and of the person for whom the work was or is to be done, or the materials were or are to be placed or furnished, and the time within which the same was or was to be done or placed or furnished;

(b) a short description of the work done or to be done, or the materials placed or furnished or to be placed or furnished;

(c) the sum claimed as due or to become due;

R.S.O. 1960,  
cc. 204, 348

(d) a description of the land as required by *The Land Titles Act* or *The Registry Act* and the regulations thereunder, as the case may be; and

(e) the date of expiry of the period of credit if credit has been given. R.S.O. 1960, c. 233, s. 16 (1), *amended*.

Verification  
of claim

(2) The claim shall be verified in duplicate by the affidavit of the person claiming the lien, or of his agent or assignee who has a personal knowledge of the matters required to be verified, and the affidavit of the agent or assignee shall state that he has such knowledge.

Lien  
against  
railway

(3) When it is desired to register a claim for lien against a railway, it is sufficient description of the land of the railway company to describe it as the land of the railway company, and every such claim shall be registered in the general register in the office for the registry division within which the lien is claimed to have arisen. R.S.O. 1960, c. 233, s. 16 (2, 3).

What may  
be included  
in claim

**17.—**(1) A claim for lien may include claims against any number of properties, and any number of persons claiming liens upon the same property may unite therein, but, where more than one lien is included in one claim, each claim for lien shall be verified by affidavit as provided in section 16.

Apportion-  
ment of  
claims

(2) The judge or officer trying the action has jurisdiction equitably to apportion against the respective properties the amounts included in any claim or claims under subsection 1. R.S.O. 1960, c. 233, s. 17, *amended*.

Informality

**18.—**(1) Substantial compliance with sections 16, 17 and 29 is sufficient and no claim for lien is invalidated by reason of failure to comply with any of the requirements of such sections unless, in the opinion of the judge or officer trying the action, the owner, contractor or subcontractor, mortgagee or other person is prejudiced thereby, and then only to the extent to which he is thereby prejudiced.

Registration  
necessary

(2) Nothing in this section dispenses with the requirement of registration of the claim for lien. R.S.O. 1960, c. 233, s. 18, *amended*.





SECTION 21. As a result of further submissions and research, the O.L.R.C. Supp. Rep., p. 8, recommends that the "umbrella principle" of the Act, which appeared as subsection 5 of section 21 of Bill 190, be dropped. The result will be that all lien claimants must register their claims, thus greatly facilitating the trial of some mechanics' lien actions.

The requirement for registration of certificates of action is to be found in section 22 (2) of this Bill.

**19.** A duplicate of the claim for lien, bearing the registrar's certificate of registration, shall be filed on or before the trial of the action, where the action is to be tried in the County of York, in the office of the master of the Supreme Court, or, where the action is to be tried elsewhere, in the office of the clerk of the county or district court of the county or district in which the action is to be tried. R.S.O. 1960, c. 233, s. 19 (1), *amended*. <sup>Duplicate to be filed</sup>

**20.** Where a claim is so registered, the person entitled to a lien shall be deemed to be a purchaser *pro tanto* and a purchaser within the provisions of *The Registry Act* and *The Land Titles Act*, but, except as herein otherwise provided, those Acts do not apply to any lien arising under this Act. R.S.O. 1960, c. 233, s. 20, *amended*. <sup>Status of lien claimant R.S.O. 1960, cc. 348, 204</sup>

**21.—(1)** A claim for lien by a contractor or subcontractor in cases not otherwise provided for may be registered before or during the performance of the contract or of the subcontract or within thirty-seven days after the completion or abandonment of the contract or of the subcontract, as the case may be. R.S.O. 1960, c. 233, s. 21 (1). <sup>Limit of time for registration</sup>

(2) A claim for lien for materials may be registered before or during the placing or furnishing thereof, or within thirty-seven days after the placing or furnishing of the last material so placed or furnished. R.S.O. 1960, c. 233, s. 21 (2), *amended*. <sup>Materials</sup>

(3) A claim for lien for services may be registered at any time during the performance of the service or within thirty-seven days after the completion of the service. R.S.O. 1960, c. 233, s. 21 (3). <sup>Services</sup>

(4) A claim for lien for wages may be registered at any time during the doing of the work for which the wages are claimed or within thirty-seven days after the last work was done for which the lien is claimed. R.S.O. 1960, c. 233, s. 21 (4), *amended*. <sup>Wages</sup>

(5) Where there is no lien on the land by virtue of subsection 2 of section 5, any person who is asserting a claim under subsection 5 of section 11 for work done or materials placed or furnished shall give notice in writing of his claim to the owner, to every person in whose hands are sums retained under section 11 to which his claim may relate and to the municipality in which the land is situate within thirty-seven days after the completion or abandonment of the work or the placing or furnishing of the materials. *New*. <sup>Notice of claim to hold back</sup>

## EXPIRY AND DISCHARGE

Expiry of  
liens

**22.**—(1) Every lien for which a claim is not registered ceases to exist on the expiration of the time limited in section 21 for the registration thereof.

Registration  
of certificate  
of action

(2) Upon an action under this Act being commenced, a certificate thereof shall be registered in the registry office in which the claim for lien is registered. R.S.O. 1960, c. 233, s. 22 (1), *part, amended*.

Vacating  
orders

(3) Where a certificate of action has been registered for two years or more in the registry office and no appointment has been taken out for the trial of the action, the judge or an officer having jurisdiction to try the action may, upon the application *ex parte* of any interested person, make an order vacating the certificate of action and discharging all liens depending thereon. R.S.O. 1960, c. 233, s. 22, *amended*.

When lien  
to cease  
if registered  
and not  
proceeded  
upon

**23.** Every lien for which a claim is registered ceases to exist on the expiration of ninety days after the work has been completed or the materials have been placed or furnished, or after the expiry of the period of credit, where such period is mentioned in the registered claim for lien, unless in the meantime an action is commenced to realize the claim or in which a subsisting claim may be realized, and a certificate is registered as provided by section 22. R.S.O. 1960, c. 233, s. 23, *amended*.

Assignment  
or death of  
lien  
claimant

**24.** The rights of a lien claimant may be assigned by an instrument in writing and, if not assigned, upon his death pass to his personal representative. R.S.O. 1960, c. 233, s. 24, *amended*.

Discharge  
of lien

**25.**—(1) A claim for lien may be discharged by the registration of a receipt acknowledging payment,

- (a) where made by a lien claimant that is not a corporation, signed by the lien claimant or his agent duly authorized in writing and verified by affidavit; or
- (b) where made by a lien claimant that is a corporation, sealed with its corporate seal. R.S.O. 1960, c. 233, s. 25 (1), *amended*.

Security or  
payment  
into court  
and vacating  
lien and  
certificate  
of action

(2) Upon application, the judge or officer having jurisdiction to try the action may, at any time,

- (a) allow security for or payment into court of the amount of the claim of the lien claimant and the amount of the claims of any other subsisting lien

SECTION 25. A number of changes in language have been made in order to clarify the intent, especially subsection 6 as to notice. See O.L.R.C. Supp. Rep., p. 9.



claimants together with such costs as he may fix, and thereupon order that the registration of the claim for lien or liens and the registration of the certificate of action, if any, be vacated;

(b) upon any other proper ground, order that the registration of the claim for lien or liens and the registration of the certificate of action, if any, be vacated; or

(c) upon proper grounds, dismiss the action. R.S.O. 1960, c. 233, s. 25 (4), *amended*.

(3) Notwithstanding sections 22 and 23, where an order to vacate the registration of a lien is made under clause *a* or *b* of subsection 2, the lien does not cease to exist for the reason that no certificate of action is registered. Effect of order under subs. 2, cls. *a* or *b*

(4) Any money so paid into court, or any bond or other security for securing the like amount and satisfactory to the judge or officer, takes the place of the property discharged and is subject to the claims of every person who has at the time of the application a subsisting claim for lien or given notice of the claim under subsection 6 of section 11 or section 14 to the same extent as if the money, bond or other security was realized by a sale of the property in an action to enforce the lien, but such amount as the judge or officer finds to be owing to the person whose lien has been so vacated is a first charge upon the money, bond or other security. Money paid into court

(5) Where the certificate required by section 22 or 23 has not been registered within the prescribed time and an application is made to vacate the registration of a claim for lien after the time for registration of the certificate, the order vacating the lien may be made *ex parte* upon production of a certificate of search under *The Land Titles Act* or of a registrar's abstract under *The Registry Act*, as the case may be, together with a certified copy of the registered claim for lien. R.S.O. 1960, cc. 204, 348. Where notice of application to vacate not requisite  
R.S.O. 1960, cc. 204, 348.

(6) Where money has been paid into court or a bond deposited in court pursuant to an order under subsection 2, the judge or officer may, upon such notice to the parties as he may require, order the money to be paid out to the persons entitled thereto or the delivery up of the bond for cancellation, as the case may be. 1961-62, c. 78, s. 1, *amended*. Payment of money out of court

(7) An order discharging a claim for lien or vacating a certificate of action shall be registered by registering the order or a certificate thereof, under the seal of the court, that Registration number



R.S.O. 1960, cc. 204, 348, includes a description of the land as required by *The Land Titles Act* or *The Registry Act* and the regulations thereunder, as the case may be, and a reference to the registration number of every registered claim for lien and certificate of action affected thereby. 1966, c. 84, s. 1, *amended*.

#### EFFECT OF TAKING SECURITY OR EXTENDING TIME

Effect  
generally

**26.**—(1) The taking of any security for, or the acceptance of any promissory note or bill of exchange for, or the taking of any acknowledgment of the claim, or the giving of time for the payment thereof, or the taking of any proceedings for the recovery, or the recovery of a personal judgment for the claim, does not merge, waive, pay, satisfy, prejudice or destroy the lien unless the lien claimant agrees in writing that it has that effect. R.S.O. 1960, c. 233, s. 26 (1).

Where  
period  
of credit  
not expired

(2) Where any such promissory note or bill of exchange has been negotiated, the lien claimant does not thereby lose his right to claim for lien if, at the time of bringing his action to enforce it or where an action is brought by another lien claimant, he is, at the time of proving his claim in the action, the holder of such promissory note or bill of exchange.

Time for  
bringing  
action not  
extended

(3) Nothing in subsection 2 extends the time limited by this Act for bringing an action to enforce a claim for lien.

Time for  
bringing  
action by  
person who  
gave time  
for payment

(4) A person who has extended the time for payment of a claim for which he has a claim for lien in order to obtain the benefit of this section shall commence an action to enforce the claim within the time prescribed by this Act and shall register a certificate as required by sections 22 and 23, but no further proceedings shall be taken in the action until the expiration of such extension of time. R.S.O. 1960, c. 233, s. 26 (2-4), *amended*.

Proving  
claim in  
action by  
another  
person

**27.** Where the period of credit in respect of a claim has not expired or there has been an extension of time for payment of the claim, the lien claimant may nevertheless, if an action is commenced by any other person to enforce a claim for lien against the same property, prove and obtain payment of his claim in the action as if the period of credit or the extended time had expired. R.S.O. 1960, c. 233, s. 27, *amended*.

#### LIEN CLAIMANT'S RIGHTS TO INFORMATION

Production  
of contract  
or agree-  
ment

**28.**—(1) Any lien claimant may in writing at any time demand of the owner or his agent the production, for inspection, of the contract or agreement with the contractor for or in respect of which the work was or is to be done or the



SECTION 29. No change in principle from the present Act.

materials were or are to be placed or furnished, if the contract or agreement is in writing or, if not in writing, the terms of the contract or agreement and the state of the accounts between the owner and the contractor, and, if the owner or his agent does not, at the time of the demand or within a reasonable time thereafter, produce the contract or agreement if in writing or, if not in writing, does not inform the person making the demand of the terms of the contract or agreement and the amount due and unpaid upon the contract or agreement or if he knowingly falsely states the terms of the contract or agreement or the amount due or unpaid thereon and if the person claiming the lien sustains loss by reason of the refusal or neglect or false statement, the owner is liable to him for the amount of the loss in an action therefor or in any action for the enforcement of a lien under this Act, and subsection 4 of section 38 applies.

(2) Any lien claimant may in writing at any time demand of a mortgagee or unpaid vendor or his agent the terms of any mortgage on the land or of any agreement for the purchase of the land in respect of which the work was or is to be done or the materials were or are to be placed or furnished and a statement showing the amount advanced on the mortgage or the amount owing on the agreement, as the case may be, and, if the mortgagee or vendor or his agent fails to inform the lien claimant at the time of the demand or within a reasonable time thereafter of the terms of the mortgage or agreement and the amount advanced or owing thereon or if he knowingly falsely states the terms of the mortgage or agreement and the amount owing thereon and the lien claimant sustains loss by the refusal or neglect or misstatement, the mortgagee or vendor is liable to him for the amount of the loss in an action therefor or in any action for the enforcement of a lien under this Act, and subsection 4 of section 38 applies.

(3) The judge or officer having jurisdiction to try an action under this Act may, on a summary application at any time before or after an action is commenced for the enforcement of the claim for lien, make an order requiring the owner or his agent or the mortgagee or his agent or the unpaid vendor or his agent or the contractor or his agent or the subcontractor or his agent, as the case may be, to produce and permit any lien claimant to inspect any such contract or agreement or mortgage or agreement for sale or the accounts or any other relevant document upon such terms as to costs as the judge or officer deems just. R.S.O. 1960, c. 233, s. 28, *amended*.

#### ACTIONS

**29.—**(1) A claim for lien is enforceable in an action in the Supreme Court.

Statement  
of claim,  
filing of

(2) An action under this section shall be commenced by filing a statement of claim in the office of the local registrar of the Supreme Court in the county or district in which the land or part thereof is situate.

Idem,  
service

(3) The statement of claim shall be served within thirty days after it is filed, but the judge having jurisdiction to try the action or, in the County of York, the master may extend the time for service.

Statement  
of defence

(4) The time for delivering the statement of defence in the action shall be the same as for entering an appearance in an action in the Supreme Court.

Parties

(5) It is not necessary to make any lien claimants parties defendant to the action, but all lien claimants served with the notice of trial shall for all purposes be deemed to be parties to the action.

Motion  
to speed  
trial

(6) After the commencement of the action, any lien claimant or other person interested may apply to the judge having jurisdiction to try the action or, in the County of York, a judge of the Supreme Court to speed the trial of the action. R.S.O. 1960, c. 233, s. 29, *amended*.

Lien  
claimants  
joining in  
action

**30.** Any number of lien claimants claiming liens on the same land may join in an action, and an action brought by a lien claimant shall be deemed to be brought on behalf of himself and all other lien claimants. R.S.O. 1960, c. 233, s. 30, *amended*.

Tribunal  
and place  
of trial

**31.**—(1) Except in the County of York, the action shall be tried by the local judge of the Supreme Court in the county or district in which the action was commenced, but, upon the application of any party or other interested person made according to the practice of the Supreme Court and upon notice, the court may direct that the action be tried by a judge of the Supreme Court at the regular sittings of the court for the trial of actions in the county or district in which the action was commenced. R.S.O. 1960, c. 233, s. 31 (1, 2).

Idem,  
York  
County

(2) In the County of York, the action shall be tried by a judge of the Supreme Court, but,

(a) on motion after defence or defence to counterclaim, if any, has been delivered or the time for such delivery has expired, a judge of the Supreme Court may refer the whole action to the master for trial pursuant to section 69 of *The Judicature Act*; or

R.S.O. 1960,  
c. 197

SECTION 31. The O.L.R.C. Supp. Rep., p. 10, recommends that as there is no relationship between subsections 1 and 2 of section 31 of Bill 190, subsection 1 should be renumbered as section 31, subsections 2 to 7 renumbered as subsections 1 to 6 of a new section 32 and the following sections renumbered accordingly. This recommendation is implemented.

SECTION 34—Subsection 2. As recommended by the O.L.R.C. Supp. Rep., p. 10, the powers that trustees may exercise under the section are broadened to include, if authorized by court order, the power to lease the property against which the claim for lien is registered.



- (b) at the trial, a judge of the Supreme Court may direct a reference to the master pursuant to section 68 or 69 of *The Judicature Act*. R.S.O. 1960, c. 233, s. 31 (3), R.S.O. 1960, c. 197, *amended*.

(3) Where on motion the whole action is referred to the master for trial, any person brought into the proceedings subsequent thereto and served with a notice of trial may apply to a judge of the Supreme Court to set aside the judgment directing the reference within seven days after service of notice of trial and, if such person fails to make such application, he is bound by such judgment as if he were originally a party thereto. Application to set aside judgment directing a reference

(4) Where the action is referred to the master for trial, he may grant leave to amend any pleading. R.S.O. 1960, c. 233, s. 31 (4, 5). Amendment of pleadings on reference

**32.** The local judges of the Supreme Court and the master to whom a reference for trial has been directed, in addition to their ordinary powers, have all the jurisdiction, powers and authority of the Supreme Court to try and completely dispose of the action and questions arising therein and all questions of set-off and counterclaim arising under the building contract or out of the work done or materials furnished to the property in question. R.S.O. 1960, c. 233, s. 32 (1), *amended*. Powers of local judges S.C.O., etc.

**33.** Where an owner enters into an entire contract for the supply of materials to be used in several buildings, the person supplying the materials may ask to have his lien follow the form of the contract and that it be for an entire sum upon all the buildings, but, in case the owner has sold one or more of the buildings, the judge or officer trying the action has jurisdiction equitably to apportion against the respective buildings the amount included in the claim for lien under the entire contract. R.S.O. 1960, c. 233, s. 32 (2), *amended*. Where contract covers several buildings

**34.—(1)** At any time after the delivery of the statement of claim, the judge or officer having jurisdiction to try the action may, on the application of any lien claimant, mortgagee or other person interested, appoint a receiver of the rents and profits of the property against which the claim for lien is registered, upon such terms and upon the giving of such security or without security as the judge or officer deems just. Power to appoint a receiver of rents and profits

(2) Any lien claimant, mortgagee or other person interested may make an application to the judge or officer at any time before or after judgment, which may hear *viva voce* or affidavit Power to direct sale and appoint trustees

evidence or both and appoint, upon such terms and upon the giving of such security or without security as the judge or officer deems just, a trustee or trustees with power to manage, mortgage, lease and sell, or manage, mortgage, lease or sell, the property against which the claim for lien is registered, and the exercise of such powers shall be under the supervision and direction of the judge or officer, and with power, when so directed by the judge or officer, to complete or partially complete the property, and, in the event that mortgage moneys are advanced to the trustee or trustees as the result of any of the powers conferred upon him or them under this subsection, such moneys take priority over every claim of lien existing as of the date of the appointment.

Property  
offered for  
sale

(3) Any property directed to be sold under subsection 2 may be offered for sale subject to any mortgage or other charge or encumbrance if the judge or officer so directs.

Proceeds  
to be paid  
into court

(4) The proceeds of any sale made by a trustee or trustees under subsection 2 shall be paid into court and are subject to the claims of all lien claimants, mortgagees or other persons interested in the property so sold as their respective rights are determined, and, in so far as applicable, section 39 applies.

Orders for  
completion  
of sale

(5) The judge or officer shall make all necessary orders for the completion of any mortgage, lease or sale authorized to be made under subsection 2.

Vesting  
of title

(6) Any vesting order made of property sold by a trustee or trustees appointed under subsection 2 vests the title of the property free from all claims for liens, encumbrances and interests of any kind including dower, except in cases where sale is made subject to any mortgage, charge, encumbrance or interest as hereinbefore provided, but nothing in this section or elsewhere in this Act shall be deemed to extinguish the right to dower, if any, of any married woman or the right to have the value of her dower ascertained and deducted from the proceeds of the sale so paid into court. R.S.O. 1960, c. 233, s. 32 (3-8), *amended*.

Order for  
preserva-  
tion of  
property

**35.** At any time after delivery of the statement of claim and before judgment, or after judgment and pending the hearing and determination of any appeal, any lien claimant, mortgagee or other interested person may make an application to the judge or officer having jurisdiction to try the action, who may hear *viva voce* or affidavit evidence or both and make an order for the preservation of any property pending the determination of the action and any appeal. *New.*

Subsection 3. The words "but only in cases where there is no dispute as to the priority of any such mortgage" at the end of the provision as it appeared in Bill 190 have been deleted as recommended by the O.L.R.C. Supp. Rep., p. 11. This will expedite the trial of mechanics' lien actions by giving the court power to direct a sale under the court's supervision in cases where the priority of a mortgage is in dispute or where the lien claimants refuse to take a position one way or the other.



**36.** Where more actions than one are brought to realize Consolidation of actions  
 liens in respect of the same land, the judge or officer having jurisdiction to try the action may, on the application of any party to any one of the actions or on the application of any other person interested, consolidate all such actions into one action and award the conduct of the consolidated action to any plaintiff as the judge or officer deems just. R.S.O. 1960, c. 233, s. 33, *amended*.

**37.** Any lien claimant entitled to the benefit of an action Transferring carriage of proceedings  
 may at any time apply to the judge or officer having jurisdiction to try the action for the carriage of the proceedings, and the judge or officer may make an order awarding such lien claimant the carriage of the proceedings. R.S.O. 1960, c. 233, s. 34, *amended*.

**38.**—(1) After the delivery of the statement of defence Appointing day for trial  
 where the plaintiff's claim is disputed, or after the time for delivery of defence in all other cases, either party may apply *ex parte* to a judge or officer having jurisdiction to try the action to fix a day for the trial thereof, and the judge or officer shall appoint the time and place of trial, and the order, signed by the judge or officer, shall form part of the record of the proceedings.

(2) The party obtaining an appointment for the trial shall, Notice of trial and service  
 at least ten clear days before the day appointed, serve notice of trial upon the solicitors for the defendants who appear by solicitors and upon the defendants who appear in person, and upon all the lienholders who have registered their claims as required by this Act or of whose claims he has notice, and upon all other persons having any charge, encumbrance or claim on the land subsequent in priority to the lien, who are not parties, and such service shall be personal unless otherwise directed by the judge or officer who may direct in what manner the notice of trial is to be served.

(3) Where any person interested in the land has been Idem  
 served with a statement of claim and makes default in delivering a statement of defence, he shall nevertheless be served with notice of trial and is entitled to defend on such terms as to costs and otherwise as the judge or officer having jurisdiction to try the action deems just.

(4) The judge, or where a reference for trial is directed, the Trial  
 master,

- (a) shall try the action, including any set-off and counter-claim, and all questions that arise therein or that are necessary to be tried in order to completely dispose



of the action and to adjust the rights and liabilities of the persons appearing before him or upon whom notice of trial has been served;

(b) shall take all accounts, make all inquiries, give all directions and do all other things necessary to finally dispose of the action and of all matters, questions and accounts arising therein or at the trial, and to adjust the rights and liabilities of and give all necessary relief to all parties to the action and all persons who have been served with the notice of trial; and

(c) shall embody the results of the trial,

(i) in the case of a judge, in a judgment, and

(ii) in the case of a master, in a report,

which judgment or report may direct payment forthwith by the person or persons primarily liable to pay the amount of the claims and costs as ascertained by the judgment or report, and execution may be issued therefor forthwith in the case of a judgment and after confirmation thereof, in the case of a report.

Power to  
vary form of  
judgment

(5) The form of the judgment or report may be varied by the judge or officer in order to meet the circumstances of the case so as to afford to any party to the proceedings any right or remedy in the judgment or report to which he may be entitled.

Sale

(6) The judge or officer may order that the estate or interest charged with the lien be sold, and may direct the sale to take place at any time after judgment or confirmation of the report, allowing, however, a reasonable time for advertising the sale.

Letting in  
lien  
claimants  
who have  
not proved  
their claims  
at trial

(7) A lien claimant who did not prove his claim at the trial, on application to the judge or officer before whom the action or reference was tried, may be let in to prove his claim, on such terms as to costs and otherwise as are deemed just, at any time before the amount realized in the action for the satisfaction of liens has been distributed, and, where his claim is allowed, the judgment or report shall be amended so as to include his claim.

Right of  
lien  
claimants  
to repre-  
sentation

(8) Any lien claimant for an amount not exceeding \$200 may be represented by an agent who is not a barrister and solicitor.

Action may  
be tried by  
any judge

(9) An action or reference under this Act may be tried by any judge or officer having jurisdiction to try the action or

reference notwithstanding that the time and place for the trial or reference thereof were appointed and fixed by another judge or officer. R.S.O. 1960, c. 233, s. 35, *amended*.

(10) Any party to an action under this Act or any other interested person may at any time and from time to time apply to a judge or officer having jurisdiction to try the action or reference for directions as to pleadings, discovery, production or any other matter relating to the action or reference, including the cross-examination of a lien claimant or his agent or assignee on his affidavit verifying the claim. *New*.

Applications  
for  
directions

**39.**—(1) Where a sale is had, the moneys arising therefrom shall be paid into court to the credit of the action, and the judge or officer before whom the action was tried shall direct to whom the moneys in court shall be paid and may add to the claim of the person conducting the action his fees and actual disbursements incurred in connection with the sale, and, where sufficient to satisfy the judgment and costs is not realized from the sale, he shall certify the amount of the deficiency and the names of the persons who are entitled to recover the same, showing the amount that each is entitled to recover and the persons adjudged to pay the same, giving credit for payments made, if any, under subsection 4 of section 38, and the persons so entitled may enforce payment of the amounts so found to be due by execution or otherwise.

Report  
where sale  
is had

(2) The judge or officer before whom the action was tried may make all necessary orders for the completion of the sale and for vesting the property in the purchaser. R.S.O. 1960, c. 233, s. 36 (1, 2).

Completion  
of sale

**40.** Where a lien claimant fails to establish a lien, he may nevertheless recover a personal judgment against any party to the action for such sum as may appear to be due to him and which he might recover in an action against such party. R.S.O. 1960, c. 233, s. 36 (3).

Where  
lien not  
established

**41.** Where property subject to a lien is sold in an action to enforce a lien, every lienholder is entitled to share in the proceeds of the sale in respect of the amount then owing to him, although the same or part thereof was not payable at the time of the commencement of the action or is not then presently payable. R.S.O. 1960, c. 233, s. 37.

Right of  
lienholders  
whose claims  
are not  
payable to  
share in  
proceeds

#### STATED CASE

**42.**—(1) If in the course of proceedings to enforce a lien a question of law arises, the judge or officer trying the case may, at the request of any party, state the question in the form of a stated case for the opinion of the Court of Appeal, and the stated case shall thereupon be set down to be heard before the Court of Appeal and notice of hearing shall be served by the party setting down upon all parties concerned.

Stated case



Trans-  
mission of  
papers

(2) The stated case shall set forth the facts material for the determination of the question raised, and all papers necessary for the hearing of the stated case by the Court of Appeal shall be transmitted to the registrar of the Supreme Court. R.S.O. 1960, c. 233, s. 39, *amended*.

#### APPEAL

Appeal

**43.**—(1) Except where the amount of a judgment in respect of a claim or counterclaim is \$200 or less, an appeal lies from any judgment under this Act to the Court of Appeal. R.S.O. 1960, c. 233, s. 40 (1), *amended*.

Appeal from  
reference

(2) Where a question is referred to the master for inquiry and report under subsection 2 of section 31, an appeal lies in the manner prescribed by the rules of court.

Confirma-  
tion of  
master's  
report

(3) Where an action is referred to the master for trial under subsection 2 of section 31, the report shall be filed and shall be deemed to be confirmed at the expiration of fifteen days from the date of service of notice of filing the same, unless notice of appeal is served within that time.

Appeal  
from  
judgment  
or report

(4) An appeal from a judgment or report made on a reference for trial lies in like manner and to the same extent as from the decision of a judge trying an action in the Supreme Court without a jury. R.S.O. 1960, c. 233, s. 40 (2, 3, 4).

Costs of  
appeal

(5) The costs of an appeal shall not be governed by subsections 2 and 3 of section 45 but, subject to any order of the Court of Appeal, shall be upon the scale of costs allowed in county court appeals where the amount involved is within the proper competence of the county court, and, where it exceeds that amount, upon the Supreme Court scale. R.S.O. 1960, c. 233, s. 40 (5), *amended*.

#### FEEES AND COSTS

Fee

**44.** The fee payable by every plaintiff, every plaintiff by counterclaim and every lien claimant, including every person recovering a personal judgment, in any action to realize a lien under this Act is,

- (a) \$5 on a claim or counterclaim not exceeding \$500;
- (b) \$10 on a claim or counterclaim exceeding \$500 but not exceeding \$1,000;
- (c) \$10 on a claim or counterclaim exceeding \$1,000, plus \$1 for every \$1,000 or fraction thereof in excess of \$1,000,

SECTION 43—Subsection 1. The limitation on appeals that is in the present Act but was not in Bill 190 appears at the commencement of this provision as recommended by the O.L.R.C. Supp. Rep., p. 11.

SECTION 45. The intent is clarified as recommended by the O.L.R.C.  
Supp. Rep., p. 11.

but no fee is payable on a claim for wages only, and in no case shall the fee on a claim exceed \$75 or on a counterclaim exceed \$25. R.S.O. 1960, c. 233, s. 41, *amended*.

**45.**—(1) Subject to subsections 2, 3, 4 and 5, any order as to costs in an action under this Act is in the discretion of the judge or officer who tries the action. R.S.O. 1960, c. 233, s. 46, *amended*. Costs not otherwise provided for

(2) The costs of the action, exclusive of actual disbursements, awarded to the plaintiffs and successful lienholders, shall not exceed in the aggregate 25 per cent of the total amount found to have been actually due on the liens at the time of the registration thereof, and shall be apportioned and borne in such proportion as the judge or officer who tries the action may direct, but in making the apportionment he shall have regard to the actual services rendered by or on behalf of the parties respectively, provided that, where a counterclaim is set up by a defendant, the amount and apportionment of the costs in respect thereof are in the discretion of the judge or officer who tries the action. R.S.O. 1960, c. 233, s. 42, *amended*. Limit of costs to plaintiffs

(3) Where costs are awarded against the plaintiff or other persons claiming liens, they shall not exceed, except in the case of a counterclaim, 25 per cent of the claim of the plaintiff and the other claimants, besides actual disbursements, and shall be apportioned and borne as the judge or officer who tries the action may direct. R.S.O. 1960, c. 233, s. 43, *amended*. Limit of costs against plaintiffs

(4) Where the least expensive course is not taken by a plaintiff, the costs allowed to him shall in no case exceed what would have been incurred if the least expensive course had been taken. R.S.O. 1960, c. 233, s. 44. Costs where least expensive course not taken

(5) Where a lien is discharged or vacated under section 25 or where judgment is given in favour of or against a claim for a lien, in addition to the costs of the action, the judge or officer who tries the action may allow a reasonable amount for the costs of drawing and registering the claim for lien or of vacating the registration thereof, but this does not apply where the claimant fails to establish a valid lien. R.S.O. 1960, c. 233, s. 45. Cost of drawing and registering and vacating registration of lien

#### RULES OF PRACTICE

**46.**—(1) The object of this Act being to enforce liens at the least expense, the procedure shall be as far as possible of a summary character, having regard to the amount and nature of the liens in question. R.S.O. 1960, c. 233, s. 47 (1). Rules of practice

Interlocutory proceedings

(2) Except where otherwise provided by this Act, no interlocutory proceedings shall be permitted without the consent of the judge or officer having jurisdiction to try the action, and then only upon proper proof that such proceedings are necessary.

Assistance of experts

(3) The judge or officer having jurisdiction to try the action may obtain the assistance of any merchant, accountant, actuary, building contractor, architect, engineer or person in such way as he deems fit, the better to enable him to determine any matter of fact in question, and may fix the remuneration of any such person and direct payment thereof by any of the parties. R.S.O. 1960, c. 233, s. 47 (2, 3), *amended*.

Rules of practice

(4) Unless otherwise provided in this Act, the Rules of Practice and Procedure of the Supreme Court apply to proceedings under this Act. *New*.

#### SERVICE OF DOCUMENTS

Service of documents

**47.** Except where otherwise directed by the judge or officer having jurisdiction to try the action, all documents relating to an action under this Act, other than statements of claim and notices of trial, are sufficiently served upon the intended recipient if sent by registered mail addressed to the intended recipient at his address for service. *New*.

#### LIENS ON CHATTELS

Right of chattel lienholder to sell chattel

**48.—(1)** Every person who has bestowed money, skill or materials upon any chattel or thing in the alteration or improvement of its properties or for the purpose of imparting an additional value to it, so as thereby to be entitled to a lien upon the chattel or thing for the amount or value of the money or skill and material bestowed, has, while the lien exists but not afterwards, in case the amount to which he is entitled remains unpaid for three months after it ought to have been paid, the right, in addition to any other remedy to which he may be entitled, to sell by auction the chattel or thing on giving one week's notice by advertisement in a newspaper having general circulation in the municipality in which the work was done, setting forth the name of the person indebted, the amount of the debt, a description of the chattel or thing to be sold, the time and place of sale, and the name of the auctioneer, and leaving a like notice in writing at the last known place of residence, if any, of the owner, if he is a resident of the municipality.

Application of proceeds of sale

(2) Such person shall apply the proceeds of the sale in payment of the amount due to him and the costs of advertising and sale and shall upon application pay over any surplus to the person entitled thereto. R.S.O. 1960, c. 233, s. 48, *amended*.

SECTION 46—Subsection 4. This new provision implements a recommendation of the O.L.R.C. Supp. Rep., p. 11.





## FORMS

**49.** The Lieutenant Governor in Council may make regulations prescribing forms and providing for their use. *New.* Forms

## MISCELLANEOUS

**50.** *The Mechanics' Lien Act, The Mechanics' Lien Amendment Act, 1961-62, The Mechanics' Lien Amendment Act, 1962-63 and The Mechanics' Lien Amendment Act, 1966* are repealed. R.S.O. 1960,  
c. 233;  
1961-62,  
c. 78;  
1962-63,  
c. 79;  
1966, c. 84,  
repealed

**51.** This Act comes into force on a day to be named by the Lieutenant Governor by his proclamation. Commence-  
ment

**52.** This Act may be cited as *The Mechanics' Lien Act, 1968-69.* Short title





The Mechanics' Lien Act, 1968-69

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*1st Reading*

December 12th, 1968

*2nd Reading*

February 20th, 1969

*3rd Reading*

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MR. WISHART

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(Reprinted as amended by  
the Legal and Municipal Committee)

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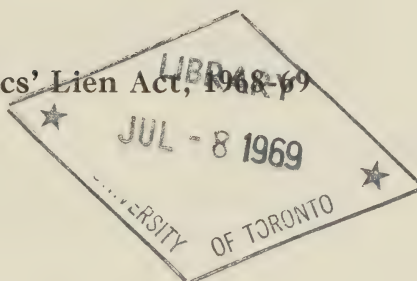
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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
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The Mechanics' Lien Act, 1968-69



Mr. WISHART

TORONTO

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### The Mechanics' Lien Act, 1968-69

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Interpre-  
tation

- (a) "completion of the contract" means substantial performance, not necessarily total performance, of the contract;
- (b) "contractor" means a person contracting with or employed directly by the owner or his agent for the doing of work or the placing or furnishing of materials for any of the purposes mentioned in this Act;
- (c) "materials" includes every kind of movable property;
- (d) "owner" includes any person and corporation, including a municipal corporation and a railway company, having any estate or interest in the land upon which or in respect of which work is done or materials are placed or furnished, at whose request, and
  - (i) upon whose credit, or
  - (ii) on whose behalf, or
  - (iii) with whose privity or consent, or
  - (iv) for whose direct benefit,

work is done or materials are placed or furnished and all persons claiming under him or it whose rights are acquired after the work in respect of which the lien is claimed is commenced or the materials placed or furnished have been commenced to be placed or furnished;

- (e) "registrar" includes a master of titles;
- (f) "registry office" includes a land titles office;



- (g) "subcontractor" means a person not contracting with or employed directly by the owner or his agent for any of the purposes mentioned in this Act, but contracting with or employed by a contractor or, under him, by another subcontractor;
- (h) "wages" means the money earned by a workman for work done by time or as piece work, and includes all monetary supplementary benefits, whether by statute, contract or collective bargaining agreement;
- (i) "workman" means a person employed for wages in any kind of labour, whether employed under a contract of service or not. R.S.O. 1960, c. 233, s. 1, *amended*.

Work  
includes  
service

(2) In this Act, the expression "the doing of work" includes the performance of a service, and corresponding expressions have corresponding meanings.

Substantial  
performance

(3) For the purposes of this Act, a contract shall be deemed to be substantially performed,

- (a) when the work or a substantial part thereof is ready for use or is being used for the purpose intended; and
- (b) when the work to be done under the contract is capable of completion or correction at a cost of not more than,
- (i) 3 per cent of the first \$250,000 of the contract price,
  - (ii) 2 per cent of the next \$250,000 of the contract price, and
  - (iii) 1 per cent of the balance of the contract price.

Idem

(4) For the purposes of this Act, where the work or a substantial part thereof is ready for use or is being used for the purpose intended and where the work cannot be completed expeditiously for reasons beyond the control of the contractor, the value of the work to be completed shall be deducted from the contract price in determining substantial performance. *New*.

#### GENERAL

Trust funds  
in hands of  
contractors

**2.—**(1) All sums received by a builder, contractor or subcontractor on account of the contract price constitute a trust fund in his hands for the benefit of the owner, builder, contractor, subcontractor, Workmen's Compensation Board,

workmen, and persons who have supplied materials on account of the contract or who have rented equipment to be used on the contract site, and the builder, contractor or subcontractor, as the case may be, is the trustee of all such sums so received by him and he shall not appropriate or convert any part thereof to his own use or to any use not authorized by the trust until all workmen and all persons who have supplied materials on the contract or who have rented equipment to be used on the contract site and all subcontractors are paid for work done or materials supplied on the contract and the Workmen's Compensation Board is paid any assessment with respect thereto. R.S.O. 1960, c. 233, s. 3 (1), *amended*.

(2) Notwithstanding subsection 1, where a builder, contractor or subcontractor has paid in whole or in part for any materials supplied on account of the contract or for any rented equipment or has paid any workman who has performed any work or any subcontractor who has placed or furnished any materials in respect of the contract, the retention by such builder, contractor or subcontractor of a sum equal to the sum so paid by him shall be deemed not to be an appropriation or conversion thereof to his own use or to any use not authorized by the trust. R.S.O. 1960, c. 233, s. 3 (3), *amended*. Exception

(3) Where a sum becomes payable under a contract to a contractor by an owner on the certificate of a person authorized under the contract to make such a certificate, an amount equal to the sum so certified that is in the owner's hands or received by him at any time thereafter shall, until paid to the contractor, constitute a trust fund in the owner's hands for the benefit of the contractor, subcontractor, Workmen's Compensation Board, workmen, and persons who have supplied materials on account of the contract or who have rented equipment to be used on the contract site, and the owner shall not appropriate or convert any part thereof to his own use or to any use not authorized by the trust until all workmen and all persons who have supplied materials on the contract or who have rented equipment to be used on the contract site and all contractors and subcontractors are paid for work done or materials supplied on the contract and the Workmen's Compensation Board is paid any assessment with respect thereto. Trust funds in hands of owners

(4) All sums received by an owner, other than a municipality as defined in *The Department of Municipal Affairs Act* or a metropolitan or regional municipality or a local board thereof, which are to be used in the financing, including the purchase price of the land and the payment of prior encumbrances, of a building, structure or work, constitute, subject to the payment of the purchase price of the land and prior Advances on mortgage, etc., a trust fund  
R.S.O. 1960, c. 98

encumbrances, a trust fund in the hands of the owner for the benefit of the persons mentioned in subsection 1, and, until the claims of all such persons have been paid, the owner shall not appropriate or convert any part thereof to his own use or to any use not authorized by the trust.

Exception

(5) Notwithstanding subsection 4, where an owner has himself paid in whole or in part for any work done, for any materials placed or furnished or for any rented equipment, the retention by him from any moneys received from the lender under subsection 4 of a sum equal to the sum so paid by him shall be deemed not to be an appropriation or conversion thereof to his own use or to any use not authorized by the trust.

Protection  
for money  
lenders

(6) Notwithstanding anything in this section, where money is lent to a person upon whom a trust is imposed by this section and is used by him to pay in whole or in part for any work done, for any materials placed or furnished or for any rented equipment, trust moneys may be applied to discharge the loan to the extent that the lender's money was so used by the trustee, and any sum so applied shall be deemed not to be an appropriation or conversion to the trustee's own use or to any use not authorized by the trust. *New.*

Offence and  
penalty

(7) Every person upon whom a trust is imposed by this section who knowingly appropriates or converts any part of any trust moneys referred to in subsection 1, 3 or 4 to his own use or to any use not authorized by the trust is guilty of an offence and on summary conviction is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than two years, or to both, and every director or officer of a corporation who knowingly assents to or acquiesces in any such offence by the corporation is guilty of such offence, in addition to the corporation, and on summary conviction is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than two years, or to both. R.S.O. 1960, c. 233, s. 3 (2), *amended*.

Limit of  
time for  
asserting  
claims to  
trust  
moneys

**3.** No action to assert any claim to trust moneys referred to in section 2 shall be commenced against a lender of money to a person upon whom a trust is imposed by that section except,

- (a) in the case of a claim by a contractor or subcontractor in cases not provided for in clauses *b*, *c* and *d*, within nine months after the completion or abandonment of the contract or subcontract;
- (b) in the case of a claim for materials, within nine months after the placing or furnishing of the last material;

(c) in the case of a claim for services, within nine months after the completion of the service; or

(d) in the case of a claim for wages, within nine months after the last work was done for which the claim is made. *New.*

4.—(1) Every agreement, oral or written, express or implied, on the part of any workman that this Act does not apply to him or that the remedies provided by it are not available for his benefit is void. Agreements waiving application of Act are void

(2) Subsection 1 does not apply,

Exception

(a) to a manager, officer or foreman; or

(b) to any person whose wages are more than \$50 a day.

(3) No agreement deprives any person otherwise entitled to a lien under this Act, who is not a party to the agreement, of the benefit of the lien, but it attaches, notwithstanding such agreement. Effect upon third party of agreement waiving lien R.S.O. 1960, c. 233, s. 4, *amended*.

#### CREATION OF LIENS

5.—(1) Unless he signs an express agreement to the contrary and in that case subject to section 4, any person who does any work upon or in respect of, or places or furnishes any materials to be used in, the making, constructing, erecting, fitting, altering, improving or repairing of any land, building, structure or works or the appurtenances to any of them for any owner, contractor or subcontractor by virtue thereof has a lien for the price of the work or materials upon the estate or interest of the owner in the land, building, structure or works and appurtenances and the land occupied thereby or enjoyed therewith, or upon or in respect of which the work is done, or upon which the materials are placed or furnished to be used, limited, however, in amount to the sum justly due to the person entitled to the lien and to the sum justly owing, except as herein provided, by the owner, and the placing or furnishing of the materials to be used upon the land or such other place in the immediate vicinity of the land designated by the owner or his agent is good and sufficient delivery for the purpose of this Act, but delivery on the designated land does not make such land subject to a lien. General right to a lien

(2) Except for the purpose of section 11, the lien given by subsection 1 does not attach to any public street or highway or to any work or improvement done thereon. Exception



Lien  
attaches  
where  
materials  
incorporated  
into  
building

(3) The lien given by subsection 1 attaches as therein set out where the materials delivered to be used are incorporated into the land, building, structure or works, notwithstanding that the materials may not have been delivered in strict accordance with subsection 1.

Interpre-  
tation

(4) In subsection 1, "agent" includes the contractor or subcontractor for whom the materials are placed or furnished, unless the person placing or furnishing the materials has had actual notice from the owner to the contrary. R.S.O. 1960, c. 233, s. 5, *amended*.

Lien for  
rented  
equipment

(5) A person who rents equipment to an owner, contractor or subcontractor for use on a contract site shall be deemed for the purposes of this Act to have performed a service for which he has a lien for the price of the rental of the equipment used on the contract site, limited, however in amount to the sum justly owed and due to the person entitled to the lien from the owner, builder, contractor or subcontractor in respect of the rental of the equipment. *New*.

When  
husband's  
interest  
liable for  
work done  
or materials  
furnished  
on land of  
spouse

6. Where work is done or materials are placed or furnished to be used upon or in respect of the land of a married woman, or in which she has an interest or an inchoate right of dower, with the privity or consent of her husband, he shall be presumed conclusively to be acting as her agent as well as for himself for the purposes of this Act unless before doing the work or placing or furnishing the materials the person doing the work or placing or furnishing the materials has had actual notice to the contrary. R.S.O. 1960, c. 233, s. 6, *amended*.

Where estate  
charged is  
leasehold

7.—(1) Where the estate or interest upon which the lien attaches is leasehold, the fee simple is also subject to the lien if the person doing the work or placing or furnishing the materials gives notice in writing, by personal service, to the owner in fee simple or his agent of the work to be done or materials to be placed or furnished unless the owner in fee simple or his agent within fifteen days thereafter gives notice in writing, by personal service, to such person that he will not be responsible therefor.

Forfeiture  
or cancella-  
tion of  
lease, effect  
of on lien-  
holder

(2) No forfeiture or attempted forfeiture of the lease on the part of the landlord, or cancellation or attempted cancellation of the lease except for non-payment of rent, deprives any person otherwise entitled to a lien of the benefit of the lien, but the person entitled to the lien may pay any rent accruing after he becomes so entitled, and the amount so paid may be added to his claim.

(3) Where the land and premises upon or in respect of which any work is done or materials are placed or furnished are encumbered by a mortgage or other charge that was registered in the proper registry office before any lien under this Act arose, the mortgage or other charge has priority over all liens under this Act to the extent of the actual value of the land and premises at the time the first lien arose, such value to be ascertained by the judge or officer having jurisdiction to try an action under this Act. <sup>Prior mortgages</sup>

(4) The time at which the first lien arose shall be deemed to be the time at which the first work was done or the first materials placed or furnished, irrespective of whether a claim for lien in respect thereof is registered or enforced and whether or not such lien is before the court. R.S.O. 1960, c. 233, s. 7 (1-4), *amended*. <sup>When first lien arose</sup>

(5) Any mortgage existing as a valid security, notwithstanding that it is a prior mortgage within the meaning of subsection 3, may also secure future advances, subject to subsection 1 of section 14. R.S.O. 1960, c. 233, s. 7 (5). <sup>Future advances</sup>

(6) A registered agreement for the sale and purchase of land and any moneys *bona fide* secured or payable thereunder has the same priority over a lien as is provided for a mortgage and mortgage moneys in subsections 3 and 5, and for the purposes of this Act the seller shall be deemed to be a mortgagee, and any moneys *bona fide* secured and payable under such agreement shall be deemed to be mortgage moneys *bona fide* secured or advanced. R.S.O. 1960, c. 233, s. 7 (6), *amended*. <sup>Registered agreement for sale and purchase of land has same priority as mortgage</sup>

8. Where any of the property upon which a lien attaches is wholly or partly destroyed by fire, any money received by reason of any insurance thereon by an owner or prior mortgagee or chargee shall take the place of the property so destroyed and is, after satisfying any prior mortgage or charge in the manner and to the extent set out in subsection 3 of section 7, subject to the claims of all persons for liens to the same extent as if the money had been realized by a sale of the property in an action to enforce the lien. R.S.O. 1960, c. 233, s. 8. <sup>Application of insurance</sup>

9. Save as herein otherwise provided, the lien does not attach so as to make the owner liable for a greater sum than the sum payable by the owner to the contractor. R.S.O. 1960, c. 233, s. 9. <sup>Limit of amount of owner's liability</sup>

Limit of  
lien when  
claimed by  
other  
than con-  
tractor

**10.** Save as herein otherwise provided, where the lien is claimed by any person other than the contractor, the amount that may be claimed in respect thereof is limited to the amount owing to the contractor or subcontractor or other person for whom the work has been done or the materials were placed or furnished. R.S.O. 1960, c. 233, s. 10, *amended*.

Holdback

**11.**—(1) In all cases, the person primarily liable upon a contract under or by virtue of which a lien may arise shall, as the work is done or the materials are furnished under the contract, retain for a period of thirty-seven days after the completion or abandonment of the work done or to be done under the contract 15 per cent of the value of the work and materials actually done, placed or furnished, as mentioned in section 5, irrespective of whether the contract or subcontract provides for partial payments or payment on completion of the work, and the value shall be calculated upon evidence given in that regard on the basis of the contract price or, if there is no specific contract price, on the basis of the actual value of the work or materials. R.S.O. 1960, c. 233, s. 11 (1), *amended*.

Reduction  
in amount  
retained

(2) Where a contract is under the supervision of an architect, engineer or other person upon whose certificate payments are to be made and thirty-seven days have elapsed after a certificate issued by that architect, engineer or other person to the effect that the subcontract has been completed to his satisfaction has been given to the person primarily liable upon that contract and to the person who became a subcontractor by a subcontract made directly under that contract, the amount to be retained by the person primarily liable upon that contract shall be reduced by 15 per cent of the subcontract price or, if there is no specific subcontract price, by 15 per cent of the actual value of the work done or materials placed or furnished under that subcontract, but this subsection does not operate if and so long as any lien derived under that subcontract is preserved by anything done under this Act.

Idem

(3) Where a certificate issued by an architect, engineer or other person to the effect that a subcontract by which a subcontractor became a subcontractor has been completed to the satisfaction of that architect, engineer or other person has been given to that subcontractor, then, for the purposes of subsections 1, 2 and 3 of section 21 and section 23, that subcontract and any materials placed or furnished or to be placed or furnished thereunder and any work done or to be done thereunder shall, so far as concerns any lien thereunder of that subcontractor, be deemed to have been completed or placed or furnished not later than the time at which the certificate was so given. R.S.O. 1960, c. 233, s. 11 (3, 4), *amended*.



(4) Where an architect, engineer or other person neglects or refuses to issue and deliver a certificate upon which payments are to be made under a contract or subcontract, the judge or officer having jurisdiction to try an action under this Act, upon application and upon being satisfied that the certificate should have been issued and delivered may, upon such terms and conditions as to costs and otherwise as he deems just, make an order that the work or materials to which the certificate would have related has been done or placed or furnished, as the case may be, and any such order has the same force and effect as if the certificate had been issued and delivered by the architect, engineer or other person. *New.*

Court order  
in lieu of  
certificate

(5) Where there is a lien under section 5, the lien is a charge upon the amount directed to be retained by this section in favour of lien claimants whose liens are derived under persons to whom the moneys so required to be retained are respectively payable and where there is no lien on the land by virtue of subsection 2 of section 5, a claim for work done or materials placed or furnished is a charge upon the amount directed to be retained by this section. R.S.O. 1960, c. 233, s. 11 (5), *amended.*

Effect of  
liens and  
claims on  
amounts  
retained

(6) All payments up to 85 per cent as fixed by subsection 1 and payments permitted as a result of the operation of subsections 2 and 3 made in good faith by an owner to a contractor, or by a contractor to a subcontractor, or by one subcontractor to another subcontractor, before notice in writing of the lien given by the person claiming the lien to the owner, contractor or subcontractor, as the case may be, operate as a discharge *pro tanto* of the lien.

Payments  
made in  
good faith  
without  
notice of  
lien

(7) Payment of the percentage required to be retained under this section may be validly made so as to discharge all claims in respect of such percentage after the expiration of the period of thirty-seven days mentioned in subsection 1 unless in the meantime proceedings have been commenced to enforce any lien or charge against the percentage as provided by sections 22 and 23, in which case the owner may pay the percentage into court in the proceedings, and such payment constitutes valid payment in discharge of the owner to the amount thereof.

Payment of  
percentage  
and  
discharge  
of liens

(8) Every contract shall be deemed to be amended in so far as is necessary to be in conformity with this section. R.S.O. 1960, c. 233, s. 11 (5-9).

Amendment  
of contracts

(9) Where the contractor or subcontractor makes default in completing his contract, the percentage required to be retained shall not, as against any lien claimant who by virtue

Where  
percentage  
not to be  
applied

of subsection 5 has a charge thereupon, be applied by the owner, contractor or subcontractor to the completion of the contract or for any other purpose nor to the payment of damages for the non-completion of the contract by the contractor or subcontractor nor in payment or satisfaction of any claim against the contractor or subcontractor. R.S.O. 1960, c. 233, s. 11 (9), *amended*.

Payments  
made  
directly  
by owner  
to persons  
entitled to  
lien

**12.** If an owner, contractor or subcontractor makes a payment to any person entitled to a lien under section 5 or to any person who but for subsection 2 of that section would be entitled to a lien under that section, for or on account of any debt, justly due to him for work done or for materials placed or furnished to be used as therein mentioned, for which he is not primarily liable, and within three days afterwards gives written notice of the payment to the person primarily liable, or his agent, the payment shall be deemed to be a payment on his contract generally to the contractor or subcontractor primarily liable but not so as to affect the percentage to be retained by the owner as provided by section 11. R.S.O. 1960, c. 233, s. 12 (1), *amended*.

Rights of  
subcon-  
tractor

**13.** Every subcontractor is entitled to enforce his lien notwithstanding the non-completion or abandonment of the contract by any contractor or subcontractor under whom he claims. R.S.O. 1960, c. 233, s. 12 (2).

Priority of  
lien

**14.—(1)** The lien has priority over all judgments, executions, assignments, attachments, garnishments and receiving orders recovered, issued or made after the lien arises, and over all payments or advances made on account of any conveyance or mortgage after notice in writing of the lien has been given to the person making such payments or after registration of a claim for the lien as hereinafter provided, and, in the absence of such notice in writing or the registration of a claim for lien, all such payments or advances have priority over any such lien. R.S.O. 1960, c. 233, s. 13 (1), *amended*.

Priority  
among  
lienholders

(2) Except where it is otherwise provided by this Act, no person entitled to a lien on any property or money is entitled to any priority or preference over another person of the same class entitled to a lien on such property or money, and each class of lienholders ranks *pari passu* for their several amounts, and the proceeds of any sale shall be distributed among them *pro rata* according to their several classes and rights.

Mortgage  
given to  
person  
entitled to  
lien void as  
against lien-  
holders

(3) Any conveyance, mortgage or charge of or on land given to any person entitled to a lien thereon under this Act in payment of or as security for any such claim, whether

given before or after such lien claim has arisen, shall, as against other parties entitled to liens under this Act, on any such land be deemed to be fraudulent and void. R.S.O. 1960, c. 233, s. 13 (2, 3).

#### PRIORITY OF WAGES

**15.**—(1) Every workman whose lien is for wages has <sup>Priority of liens for wages</sup> priority to the extent of thirty days wages over all other liens derived through the same contractor or subcontractor to the extent of and on the 15 per cent directed to be retained by section 11 to which the contractor or subcontractor through whom the lien is derived is entitled, and all such workmen rank thereon *pari passu*.

(2) Every workman is entitled to enforce a lien in respect <sup>Enforcing lien in such cases</sup> of any contract or subcontract that has not been completed and, notwithstanding anything to the contrary in this Act, may serve a notice of motion on the proper persons, returnable in four days after service thereof before the judge or officer having jurisdiction to try an action under this Act, that the applicant will on the return of the motion ask for judgment on his claim for lien, registered particulars of which shall accompany the notice of motion duly verified by affidavit.

(3) If the contract has not been completed when the lien <sup>Calculating percentage when contract not fulfilled</sup> is claimed by a workman, the percentage shall be calculated on the value of the work done or materials placed or furnished by the contractor or subcontractor by whom the workman is employed, having regard to the contract price, if any.

(4) Every device by an owner, contractor or subcontractor <sup>Devices to defeat priority of workmen</sup> to defeat the priority given to a workman for his wages and every payment made for the purpose of defeating or impairing a lien are void. R.S.O. 1960, c. 233, s. 14, *amended*.

#### REGISTRATION

**16.**—(1) A claim for a lien may be registered in the proper <sup>Registration of claim for lien</sup> registry office and shall set out,

- (a) the name and an address for service of the person claiming the lien and of the owner or of the person whom the person claiming the lien, or his agent, believes to be the owner of the land, and of the person for whom the work was or is to be done, or the materials were or are to be placed or furnished, and the time within which the same was or was to be done or placed or furnished;

(b) a short description of the work done or to be done, or the materials placed or furnished or to be placed or furnished;

(c) the sum claimed as due or to become due;

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(d) a description of the land as required by *The Land Titles Act* or *The Registry Act* and the regulations thereunder, as the case may be; and

(e) the date of expiry of the period of credit if credit has been given. R.S.O. 1960, c. 233, s. 16 (1), *amended*.

Verification  
of claim

(2) The claim shall be verified in duplicate by the affidavit of the person claiming the lien, or of his agent or assignee who has a personal knowledge of the matters required to be verified, and the affidavit of the agent or assignee shall state that he has such knowledge.

Lien  
against  
railway

(3) When it is desired to register a claim for lien against a railway, it is sufficient description of the land of the railway company to describe it as the land of the railway company, and every such claim shall be registered in the general register in the office for the registry division within which the lien is claimed to have arisen. R.S.O. 1960, c. 233, s. 16 (2, 3).

What may  
be included  
in claim

**17.**—(1) A claim for lien may include claims against any number of properties, and any number of persons claiming liens upon the same property may unite therein, but, where more than one lien is included in one claim, each claim for lien shall be verified by affidavit as provided in section 16.

Apportion-  
ment of  
claims

(2) The judge or officer trying the action has jurisdiction equitably to apportion against the respective properties the amounts included in any claim or claims under subsection 1. R.S.O. 1960, c. 233, s. 17, *amended*.

Informality

**18.**—(1) Substantial compliance with sections 16, 17 and 29 is sufficient and no claim for lien is invalidated by reason of failure to comply with any of the requirements of such sections unless, in the opinion of the judge or officer trying the action, the owner, contractor or subcontractor, mortgagee or other person is prejudiced thereby, and then only to the extent to which he is thereby prejudiced.

Registration  
necessary

(2) Nothing in this section dispenses with the requirement of registration of the claim for lien. R.S.O. 1960, c. 233, s. 18, *amended*.



**19.** A duplicate of the claim for lien, bearing the registrar's <sup>Duplicate to be filed</sup> certificate of registration, shall be filed on or before the trial of the action, where the action is to be tried in the County of York, in the office of the master of the Supreme Court, or, where the action is to be tried elsewhere, in the office of the clerk of the county or district court of the county or district in which the action is to be tried. R.S.O. 1960, c. 233, s. 19 (1), *amended*.

**20.** Where a claim is so registered, the person entitled to a lien shall be deemed to be a purchaser *pro tanto* and a <sup>Status of lien claimant</sup> purchaser within the provisions of *The Registry Act* and *The Land Titles Act*, but, except as herein otherwise provided, <sup>R.S.O. 1960, cc. 348, 204</sup> those Acts do not apply to any lien arising under this Act. R.S.O. 1960, c. 233, s. 20, *amended*.

**21.—(1)** A claim for lien by a contractor or subcontractor <sup>Limit of time for registration</sup> in cases not otherwise provided for may be registered before or during the performance of the contract or of the subcontract or within thirty-seven days after the completion or abandonment of the contract or of the subcontract, as the case may be. R.S.O. 1960, c. 233, s. 21 (1).

(2) A claim for lien for materials may be registered before <sup>Materials</sup> or during the placing or furnishing thereof, or within thirty-seven days after the placing or furnishing of the last material so placed or furnished. R.S.O. 1960, c. 233, s. 21 (2), *amended*.

(3) A claim for lien for services may be registered at any <sup>Services</sup> time during the performance of the service or within thirty-seven days after the completion of the service. R.S.O. 1960, c. 233, s. 21 (3).

(4) A claim for lien for wages may be registered at any time <sup>Wages</sup> during the doing of the work for which the wages are claimed or within thirty-seven days after the last work was done for which the lien is claimed. R.S.O. 1960, c. 233, s. 21 (4), *amended*.

(5) Where there is no lien on the land by virtue of subsection 2 of section 5, any person who is asserting a claim under subsection 5 of section 11 for work done or materials placed or furnished shall give notice in writing of his claim to the owner, to every person in whose hands are sums retained under section 11 to which his claim may relate and to the municipality in which the land is situate within thirty-seven days after the completion or abandonment of the work or the placing or furnishing of the materials. *New*.

## EXPIRY AND DISCHARGE

Expiry of  
liens

**22.**—(1) Every lien for which a claim is not registered ceases to exist on the expiration of the time limited in section 21 for the registration thereof.

Registration  
of certificate  
of action

(2) Upon an action under this Act being commenced, a certificate thereof shall be registered in the registry office in which the claim for lien is registered. R.S.O. 1960, c. 233, s. 22 (1), *part, amended*.

Vacating  
orders

(3) Where a certificate of action has been registered for two years or more in the registry office and no appointment has been taken out for the trial of the action, the judge or an officer having jurisdiction to try the action may, upon the application *ex parte* of any interested person, make an order vacating the certificate of action and discharging all liens depending thereon. R.S.O. 1960, c. 233, s. 22, *amended*.

When lien  
to cease  
if registered  
and not  
proceeded  
upon

**23.**—(1) Every lien for which a claim is registered ceases to exist on the expiration of ninety days after the work has been completed or the materials have been placed or furnished, or after the expiry of the period of credit, where such period is mentioned in the registered claim for lien, unless in the meantime an action is commenced to realize the claim or in which a subsisting claim may be realized, and a certificate is registered as provided by section 22. R.S.O. 1960, c. 233, s. 23, *amended*.

Expiration  
of claim

(2) Every claim asserted under subsection 5 of section 11 for work done or materials placed or furnished ceases to exist on the expiration of ninety days after,

- (a) the work has been completed or abandoned;
- (b) the materials have been placed or furnished; or
- (c) the expiry of the period of credit, where such period is mentioned in the notice referred to in subsection 5 of section 21,

unless in the meantime an action under this Act is commenced to realize the claim or in which a subsisting claim may be realized.

Idem

(3) Subsection 2 of section 22 does not apply to an action referred to in subsection 2, but sections 29, 30, 31, 32 and 34 to 38 do apply *mutatis mutandis* to such an action.

Assignment  
or death of  
lien  
claimant

**24.** The rights of a lien claimant may be assigned by an instrument in writing and, if not assigned, upon his death pass to his personal representative. R.S.O. 1960, c. 233, s. 24, *amended*.

**25.**—(1) A claim for lien may be discharged by the registration of a receipt acknowledging payment, Discharge of lien

- (a) where made by a lien claimant that is not a corporation, signed by the lien claimant or his agent duly authorized in writing and verified by affidavit; or
- (b) where made by a lien claimant that is a corporation, sealed with its corporate seal. R.S.O. 1960, c. 233, s. 25 (1), *amended*.

(2) Upon application, the judge or officer having jurisdiction to try the action may, at any time, Security or payment into court and vacating lien and certificate of action

- (a) allow security for or payment into court of the amount of the claim of the lien claimant and the amount of the claims of any other subsisting lien claimants together with such costs as he may fix, and thereupon order that the registration of the claim for lien or liens and the registration of the certificate of action, if any, be vacated;
- (b) upon any other proper ground, order that the registration of the claim for lien or liens and the registration of the certificate of action, if any, be vacated; or
- (c) upon proper grounds, dismiss the action. R.S.O. 1960, c. 233, s. 25 (4), *amended*.

(3) Notwithstanding sections 22 and 23, where an order to vacate the registration of a lien is made under clause *a* or *b* of subsection 2, the lien does not cease to exist for the reason that no certificate of action is registered. Effect of order under subs. 2, cls. a or b

(4) Any money so paid into court, or any bond or other security for securing the like amount and satisfactory to the judge or officer, takes the place of the property discharged and is subject to the claims of every person who has at the time of the application a subsisting claim for lien or given notice of the claim under subsection 6 of section 11 or section 14 to the same extent as if the money, bond or other security was realized by a sale of the property in an action to enforce the lien, but such amount as the judge or officer finds to be owing to the person whose lien has been so vacated is a first charge upon the money, bond or other security. Money paid into court

(5) Where the certificate required by section 22 or 23 has not been registered within the prescribed time and an application is made to vacate the registration of a claim for lien after the time for registration of the certificate, the Where notice of application to vacate not requisite



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order vacating the lien may be made *ex parte* upon production of a certificate of search under *The Land Titles Act* or of a registrar's abstract under *The Registry Act*, as the case may be, together with a certified copy of the registered claim for lien. R.S.O. 1960, c. 233, s. 25 (5-7), *amended*.

Payment of  
money out  
of court

(6) Where money has been paid into court or a bond deposited in court pursuant to an order under subsection 2, the judge or officer may, upon such notice to the parties as he may require, order the money to be paid out to the persons entitled thereto or the delivery up of the bond for cancellation, as the case may be. 1961-62, c. 78, s. 1, *amended*.

Registration  
number

(7) An order discharging a claim for lien or vacating a certificate of action shall be registered by registering the order or a certificate thereof, under the seal of the court, that includes a description of the land as required by *The Land Titles Act* or *The Registry Act* and the regulations thereunder, as the case may be, and a reference to the registration number of every registered claim for lien and certificate of action affected thereby. 1966, c. 84, s. 1, *amended*.

#### EFFECT OF TAKING SECURITY OR EXTENDING TIME

Effect  
generally

**26.**—(1) The taking of any security for, or the acceptance of any promissory note or bill of exchange for, or the taking of any acknowledgment of the claim, or the giving of time for the payment thereof, or the taking of any proceedings for the recovery, or the recovery of a personal judgment for the claim, does not merge, waive, pay, satisfy, prejudice or destroy the lien unless the lien claimant agrees in writing that it has that effect. R.S.O. 1960, c. 233, s. 26 (1).

Where  
period  
of credit  
not expired

(2) Where any such promissory note or bill of exchange has been negotiated, the lien claimant does not thereby lose his right to claim for lien if, at the time of bringing his action to enforce it or where an action is brought by another lien claimant, he is, at the time of proving his claim in the action, the holder of such promissory note or bill of exchange.

Time for  
bringing  
action not  
extended

(3) Nothing in subsection 2 extends the time limited by this Act for bringing an action to enforce a claim for lien.

Time for  
bringing  
action by  
person who  
gave time  
for payment

(4) A person who has extended the time for payment of a claim for which he has a claim for lien in order to obtain the benefit of this section shall commence an action to enforce the claim within the time prescribed by this Act and shall register a certificate as required by sections 22 and 23, but no further proceedings shall be taken in the action until the expiration of such extension of time. R.S.O. 1960, c. 233, s. 26 (2-4), *amended*.

**27.** Where the period of credit in respect of a claim has not expired or there has been an extension of time for payment of the claim, the lien claimant may nevertheless, if an action is commenced by any other person to enforce a claim for lien against the same property, prove and obtain payment of his claim in the action as if the period of credit or the extended time had expired. R.S.O. 1960, c. 233, s. 27, *amended*.

Proving  
claim in  
action by  
another  
person

#### LIEN CLAIMANT'S RIGHTS TO INFORMATION

**28.—(1)** Any lien claimant may in writing at any time demand of the owner or his agent the production, for inspection, of the contract or agreement with the contractor for or in respect of which the work was or is to be done or the materials were or are to be placed or furnished, if the contract or agreement is in writing or, if not in writing, the terms of the contract or agreement and the state of the accounts between the owner and the contractor, and, if the owner or his agent does not, at the time of the demand or within a reasonable time thereafter, produce the contract or agreement if in writing or, if not in writing, does not inform the person making the demand of the terms of the contract or agreement and the amount due and unpaid upon the contract or agreement or if he knowingly falsely states the terms of the contract or agreement or the amount due or unpaid thereon and if the person claiming the lien sustains loss by reason of the refusal or neglect or false statement, the owner is liable to him for the amount of the loss in an action therefor or in any action for the enforcement of a lien under this Act, and subsection 4 of section 38 applies.

Production  
of contract  
or agree-  
ment

**(2)** Any lien claimant may in writing at any time demand of a mortgagee or unpaid vendor or his agent the terms of any mortgage on the land or of any agreement for the purchase of the land in respect of which the work was or is to be done or the materials were or are to be placed or furnished and a statement showing the amount advanced on the mortgage or the amount owing on the agreement, as the case may be, and, if the mortgagee or vendor or his agent fails to inform the lien claimant at the time of the demand or within a reasonable time thereafter of the terms of the mortgage or agreement and the amount advanced or owing thereon or if he knowingly falsely states the terms of the mortgage or agreement and the amount owing thereon and the lien claimant sustains loss by the refusal or neglect or misstatement, the mortgagee or vendor is liable to him for the amount of the loss in an action therefor or in any action for the enforcement of a lien under this Act, and subsection 4 of section 38 applies.

Statement  
of mort-  
gagee or  
unpaid  
vendor

Production  
of contract  
or agree-  
ment

(3) The judge or officer having jurisdiction to try an action under this Act may, on a summary application at any time before or after an action is commenced for the enforcement of the claim for lien, make an order requiring the owner or his agent or the mortgagee or his agent or the unpaid vendor or his agent or the contractor or his agent or the subcontractor or his agent, as the case may be, to produce and permit any lien claimant to inspect any such contract or agreement or mortgage or agreement for sale or the accounts or any other relevant document upon such terms as to costs as the judge or officer deems just. R.S.O. 1960, c. 233, s. 28, *amended*.

#### ACTIONS

How claim  
enforceable

**29.**—(1) A claim for lien is enforceable in an action in the Supreme Court.

Statement  
of claim,  
filing of

(2) An action under this section shall be commenced by filing a statement of claim in the office of the local registrar of the Supreme Court in the county or district in which the land or part thereof is situate.

Idem.  
service

(3) The statement of claim shall be served within thirty days after it is filed, but the judge having jurisdiction to try the action or, in the County of York, the master may extend the time for service.

Statement  
of defence

(4) The time for delivering the statement of defence in the action shall be the same as for entering an appearance in an action in the Supreme Court.

Parties

(5) It is not necessary to make any lien claimants parties defendant to the action, but all lien claimants served with the notice of trial shall for all purposes be deemed to be parties to the action.

Motion  
to speed  
trial

(6) After the commencement of the action, any lien claimant or other person interested may apply to the judge having jurisdiction to try the action or, in the County of York, a judge of the Supreme Court to speed the trial of the action. R.S.O. 1960, c. 233, s. 29, *amended*.

Lien  
claimants  
joining in  
action

**30.** Any number of lien claimants claiming liens on the same land may join in an action, and an action brought by a lien claimant shall be deemed to be brought on behalf of himself and all other lien claimants. R.S.O. 1960, c. 233, s. 30, *amended*.

Tribunal  
and place  
of trial

**31.**—(1) Except in the County of York, the action shall be tried by the local judge of the Supreme Court in the county or district in which the action was commenced, but,



upon the application of any party or other interested person made according to the practice of the Supreme Court and upon notice, the court may direct that the action be tried by a judge of the Supreme Court at the regular sittings of the court for the trial of actions in the county or district in which the action was commenced. R.S.O. 1960, c. 233, s. 31 (1, 2).

(2) In the County of York, the action shall be tried by a judge of the Supreme Court, but, Idem,  
York  
County

(a) on motion after defence or defence to counterclaim, if any, has been delivered or the time for such delivery has expired, a judge of the Supreme Court may refer the whole action to the master for trial pursuant to section 69 of *The Judicature Act*; or R.S.O. 1960,  
c. 197

(b) at the trial, a judge of the Supreme Court may direct a reference to the master pursuant to section 68 or 69 of *The Judicature Act*. R.S.O. 1960, c. 233, s. 31 (3), R.S.O. 1960,  
c. 197 amended.

(3) Where on motion the whole action is referred to the master for trial, any person brought into the proceedings subsequent thereto and served with a notice of trial may apply to a judge of the Supreme Court to set aside the judgment directing the reference within seven days after service of notice of trial and, if such person fails to make such application, he is bound by such judgment as if he were originally a party thereto. Application  
to set aside  
judgment  
directing a  
reference

(4) Where the action is referred to the master for trial, he may grant leave to amend any pleading. R.S.O. 1960, c. 233, s. 31 (4, 5). Amend-  
ment of  
pleadings  
on reference

**32.** The local judges of the Supreme Court and the master to whom a reference for trial has been directed, in addition to their ordinary powers, have all the jurisdiction, powers and authority of the Supreme Court to try and completely dispose of the action and questions arising therein and all questions of set-off and counterclaim arising under the building contract or out of the work done or materials furnished to the property in question. R.S.O. 1960, c. 233, s. 32 (1), *amended*. Powers of  
local  
judges  
S.C.O., etc.

**33.** Where an owner enters into an entire contract for the supply of materials to be used in several buildings, the person supplying the materials may ask to have his lien follow the form of the contract and that it be for an entire sum upon all the buildings, but, in case the owner has sold one or more of the buildings, the judge or officer trying the action has juris- Where con-  
tract covers  
several  
buildings

diction equitably to apportion against the respective buildings the amount included in the claim for lien under the entire contract. R.S.O. 1960, c. 233, s. 32 (2), *amended*.

Power to  
appoint a  
receiver of  
rents and  
profits

**34.—(1)** At any time after the delivery of the statement of claim, the judge or officer having jurisdiction to try the action may, on the application of any lien claimant, mortgagee or other person interested, appoint a receiver of the rents and profits of the property against which the claim for lien is registered, upon such terms and upon the giving of such security or without security as the judge or officer deems just.

Power to  
direct  
sale and  
appoint  
trustee

(2) Any lien claimant, mortgagee or other person interested may make an application to the judge or officer at any time before or after judgment, which may hear *viva voce* or affidavit evidence or both and appoint, upon such terms and upon the giving of such security or without security as the judge or officer deems just, a trustee or trustees with power to manage, mortgage, lease and sell, or manage, mortgage, lease or sell, the property against which the claim for lien is registered, and the exercise of such powers shall be under the supervision and direction of the judge or officer, and with power, when so directed by the judge or officer, to complete or partially complete the property, and, in the event that mortgage moneys are advanced to the trustee or trustees as the result of any of the powers conferred upon him or them under this subsection, such moneys take priority over every claim of lien existing as of the date of the appointment.

Property  
offered for  
sale

(3) Any property directed to be sold under subsection 2 may be offered for sale subject to any mortgage or other charge or encumbrance if the judge or officer so directs.

Proceeds  
to be paid  
into court

(4) The proceeds of any sale made by a trustee or trustees under subsection 2 shall be paid into court and are subject to the claims of all lien claimants, mortgagees or other persons interested in the property so sold as their respective rights are determined, and, in so far as applicable, section 39 applies.

Orders for  
completion  
of sale

(5) The judge or officer shall make all necessary orders for the completion of any mortgage, lease or sale authorized to be made under subsection 2.

Vesting  
of title

(6) Any vesting order made of property sold by a trustee or trustees appointed under subsection 2 vests the title of the property free from all claims for liens, encumbrances and interests of any kind including dower, except in cases where sale is made subject to any mortgage, charge, encumbrance or interest as hereinbefore provided, but nothing in this

section or elsewhere in this Act shall be deemed to extinguish the right to dower, if any, of any married woman or the right to have the value of her dower ascertained and deducted from the proceeds of the sale so paid into court. R.S.O. 1960, c. 233, s. 32 (3-8), *amended*.

**35.** At any time after delivery of the statement of claim and before judgment, or after judgment and pending the hearing and determination of any appeal, any lien claimant, mortgagee or other interested person may make an application to the judge or officer having jurisdiction to try the action, who may hear *viva voce* or affidavit evidence or both and make an order for the preservation of any property pending the determination of the action and any appeal. *New*.

Order for  
preserva-  
tion of  
property

**36.** Where more actions than one are brought to realize liens in respect of the same land, the judge or officer having jurisdiction to try the action may, on the application of any party to any one of the actions or on the application of any other person interested, consolidate all such actions into one action and award the conduct of the consolidated action to any plaintiff as the judge or officer deems just. R.S.O. 1960, c. 233, s. 33, *amended*.

Consolida-  
tion of  
actions

**37.** Any lien claimant entitled to the benefit of an action may at any time apply to the judge or officer having jurisdiction to try the action for the carriage of the proceedings, and the judge or officer may make an order awarding such lien claimant the carriage of the proceedings. R.S.O. 1960, c. 233, s. 34, *amended*.

Transferring  
carriage of  
proceedings

**38.**—(1) After the delivery of the statement of defence where the plaintiff's claim is disputed, or after the time for delivery of defence in all other cases, either party may apply *ex parte* to a judge or officer having jurisdiction to try the action to fix a day for the trial thereof, and the judge or officer shall appoint the time and place of trial, and the order, signed by the judge or officer, shall form part of the record of the proceedings.

Appointing  
day for  
trial

(2) The party obtaining an appointment for the trial shall, at least ten clear days before the day appointed, serve notice of trial upon the solicitors for the defendants who appear by solicitors and upon the defendants who appear in person, and upon all the lienholders who have registered their claims as required by this Act or of whose claims he has notice, and upon all other persons having any charge, encumbrance or claim on the land subsequent in priority to the lien, who are not parties, and such service shall be personal unless otherwise directed by the judge or officer who may direct in what manner the notice of trial is to be served.

Notice of  
trial and  
service



Idem

(3) Where any person interested in the land has been served with a statement of claim and makes default in delivering a statement of defence, he shall nevertheless be served with notice of trial and is entitled to defend on such terms as to costs and otherwise as the judge or officer having jurisdiction to try the action deems just.

Trial

(4) The judge, or where a reference for trial is directed, the master,

(a) shall try the action, including any set-off and counter-claim, and all questions that arise therein or that are necessary to be tried in order to completely dispose of the action and to adjust the rights and liabilities of the persons appearing before him or upon whom notice of trial has been served;

(b) shall take all accounts, make all inquiries, give all directions and do all other things necessary to finally dispose of the action and of all matters, questions and accounts arising therein or at the trial, and to adjust the rights and liabilities of and give all necessary relief to all parties to the action and all persons who have been served with the notice of trial; and

(c) shall embody the results of the trial,

(i) in the case of a judge, in a judgment, and

(ii) in the case of a master, in a report,

which judgment or report may direct payment forthwith by the person or persons primarily liable to pay the amount of the claims and costs as ascertained by the judgment or report, and execution may be issued therefor forthwith in the case of a judgment and after confirmation thereof, in the case of a report.

Power to  
vary form of  
judgment

(5) The form of the judgment or report may be varied by the judge or officer in order to meet the circumstances of the case so as to afford to any party to the proceedings any right or remedy in the judgment or report to which he may be entitled.

Sale

(6) The judge or officer may order that the estate or interest charged with the lien be sold, and may direct the sale to take place at any time after judgment or confirmation of the report, allowing, however, a reasonable time for advertising the sale.

Letting in  
lien  
claimants  
who have  
not proved  
their claims  
at trial

(7) A lien claimant who did not prove his claim at the trial, on application to the judge or officer before whom the action or reference was tried, may be let in to prove his claim, on



such terms as to costs and otherwise as are deemed just, at any time before the amount realized in the action for the satisfaction of liens has been distributed, and, where his claim is allowed, the judgment or report shall be amended so as to include his claim.

(8) Any lien claimant for an amount not exceeding \$200 may be represented by an agent who is not a barrister and solicitor. Right of lien claimants to representation

(9) An action or reference under this Act may be tried by any judge or officer having jurisdiction to try the action or reference notwithstanding that the time and place for the trial or reference thereof were appointed and fixed by another judge or officer. R.S.O. 1960, c. 233, s. 35, *amended*. Action may be tried by any judge

(10) Any party to an action under this Act or any other interested person may at any time and from time to time apply to a judge or officer having jurisdiction to try the action or reference for directions as to pleadings, discovery, production or any other matter relating to the action or reference, including the cross-examination of a lien claimant or his agent or assignee on his affidavit verifying the claim. *New*. Applications for directions

**39.**—(1) Where a sale is had, the moneys arising therefrom shall be paid into court to the credit of the action, and the judge or officer before whom the action was tried shall direct to whom the moneys in court shall be paid and may add to the claim of the person conducting the action his fees and actual disbursements incurred in connection with the sale, and, where sufficient to satisfy the judgment and costs is not realized from the sale, he shall certify the amount of the deficiency and the names of the persons who are entitled to recover the same, showing the amount that each is entitled to recover and the persons adjudged to pay the same, giving credit for payments made, if any, under subsection 4 of section 38, and the persons so entitled may enforce payment of the amounts so found to be due by execution or otherwise. Report where sale is had

(2) The judge or officer before whom the action was tried may make all necessary orders for the completion of the sale and for vesting the property in the purchaser. R.S.O. 1960, c. 233, s. 36 (1, 2). Completion of sale

**40.** Where a lien claimant fails to establish a lien, he may nevertheless recover a personal judgment against any party to the action for such sum as may appear to be due to him and which he might recover in an action against such party. R.S.O. 1960, c. 233, s. 36 (3). Where lien not established

Right of  
lienholders  
whose claims  
are not  
payable to  
share in  
proceeds

**41.** Where property subject to a lien is sold in an action to enforce a lien, every lienholder is entitled to share in the proceeds of the sale in respect of the amount then owing to him, although the same or part thereof was not payable at the time of the commencement of the action or is not then presently payable. R.S.O. 1960, c. 233, s. 37.

#### STATED CASE

Stated case

**42.**—(1) If in the course of proceedings to enforce a lien a question of law arises, the judge or officer trying the case may, at the request of any party, state the question in the form of a stated case for the opinion of the Court of Appeal, and the stated case shall thereupon be set down to be heard before the Court of Appeal and notice of hearing shall be served by the party setting down upon all parties concerned.

Trans-  
mission of  
papers

(2) The stated case shall set forth the facts material for the determination of the question raised, and all papers necessary for the hearing of the stated case by the Court of Appeal shall be transmitted to the registrar of the Supreme Court. R.S.O. 1960, c. 233, s. 39, *amended*.

#### APPEAL

Appeal

**43.**—(1) Except where the amount of a judgment in respect of a claim or counterclaim is \$200 or less, an appeal lies from any judgment under this Act to the Court of Appeal. R.S.O. 1960, c. 233, s. 40 (1), *amended*.

Appeal from  
reference

(2) Where a question is referred to the master for inquiry and report under subsection 2 of section 31, an appeal lies in the manner prescribed by the rules of court.

Confirma-  
tion of  
master's  
report

(3) Where an action is referred to the master for trial under subsection 2 of section 31, the report shall be filed and shall be deemed to be confirmed at the expiration of fifteen days from the date of service of notice of filing the same, unless notice of appeal is served within that time.

Appeal  
from  
judgment  
or report

(4) An appeal from a judgment or report made on a reference for trial lies in like manner and to the same extent as from the decision of a judge trying an action in the Supreme Court without a jury. R.S.O. 1960, c. 233, s. 40 (2, 3, 4).

Costs of  
appeal

(5) The costs of an appeal shall not be governed by subsections 2 and 3 of section 45 but, subject to any order of the Court of Appeal, shall be upon the scale of costs allowed in county court appeals where the amount involved is within the proper competence of the county court, and, where it exceeds that amount, upon the Supreme Court scale. R.S.O. 1960, c. 233, s. 40 (5), *amended*.

## FEES AND COSTS

**44.** The fee payable by every plaintiff, every plaintiff by <sup>Fee</sup> counterclaim and every lien claimant, including every person recovering a personal judgment, in any action to realize a lien under this Act is,

- (a) \$5 on a claim or counterclaim not exceeding \$500;
- (b) \$10 on a claim or counterclaim exceeding \$500 but not exceeding \$1,000;
- (c) \$10 on a claim or counterclaim exceeding \$1,000, plus \$1 for every \$1,000 or fraction thereof in excess of \$1,000,

but no fee is payable on a claim for wages only, and in no case shall the fee on a claim exceed \$75 or on a counterclaim exceed \$25. R.S.O. 1960, c. 233, s. 41, *amended*.

**45.**—(1) Subject to subsections 2, 3, 4 and 5, any order <sup>Costs not otherwise provided for</sup> as to costs in an action under this Act is in the discretion of the judge or officer who tries the action. R.S.O. 1960, c. 233, s. 46, *amended*.

(2) The costs of the action, exclusive of actual disburse- <sup>Limit of costs to plaintiffs</sup> ments, awarded to the plaintiffs and successful lienholders, shall not exceed in the aggregate 25 per cent of the total amount found to have been actually due on the liens at the time of the registration thereof, and shall be apportioned and borne in such proportion as the judge or officer who tries the action may direct, but in making the apportionment he shall have regard to the actual services rendered by or on behalf of the parties respectively, provided that, where a counterclaim is set up by a defendant, the amount and apportionment of the costs in respect thereof are in the discretion of the judge or officer who tries the action. R.S.O. 1960, c. 233, s. 42, *amended*.

(3) Where costs are awarded against the plaintiff or other <sup>Limit of costs against plaintiffs</sup> persons claiming liens, they shall not exceed, except in the case of a counterclaim, 25 per cent of the claim of the plaintiff and the other claimants, besides actual disbursements, and shall be apportioned and borne as the judge or officer who tries the action may direct. R.S.O. 1960, c. 233, s. 43, *amended*.

(4) Where the least expensive course is not taken by a <sup>Costs where least expensive course not taken</sup> plaintiff, the costs allowed to him shall in no case exceed what would have been incurred if the least expensive course had been taken. R.S.O. 1960, c. 233, s. 44.



Cost of  
drawing and  
registering  
and vacating  
registration  
of lien

(5) Where a lien is discharged or vacated under section 25 or where judgment is given in favour of or against a claim for a lien, in addition to the costs of the action, the judge or officer who tries the action may allow a reasonable amount for the costs of drawing and registering the claim for lien or of vacating the registration thereof, but this does not apply where the claimant fails to establish a valid lien. R.S.O. 1960, c. 233, s. 45.

#### RULES OF PRACTICE

Rules of  
practice

**46.**—(1) The object of this Act being to enforce liens at the least expense, the procedure shall be as far as possible of a summary character, having regard to the amount and nature of the liens in question. R.S.O. 1960, c. 233, s. 47 (1).

Interlocu-  
tory proceed-  
ings

(2) Except where otherwise provided by this Act, no interlocutory proceedings shall be permitted without the consent of the judge or officer having jurisdiction to try the action, and then only upon proper proof that such proceedings are necessary.

Assistance  
of experts

(3) The judge or officer having jurisdiction to try the action may obtain the assistance of any merchant, accountant, actuary, building contractor, architect, engineer or person in such way as he deems fit, the better to enable him to determine any matter of fact in question, and may fix the remuneration of any such person and direct payment thereof by any of the parties. R.S.O. 1960, c. 233, s. 47 (2, 3), *amended*.

Rules of  
practice

(4) Unless otherwise provided in this Act, the Rules of Practice and Procedure of the Supreme Court apply to proceedings under this Act. *New*.

#### SERVICE OF DOCUMENTS

Service of  
documents

**47.** Except where otherwise directed by the judge or officer having jurisdiction to try the action, all documents relating to an action under this Act, other than statements of claim and notices of trial, are sufficiently served upon the intended recipient if sent by registered mail addressed to the intended recipient at his address for service. *New*.

#### LIENS ON CHATTELS

Right of  
chattel  
lienholder  
to sell  
chattel

**48.**—(1) Every person who has bestowed money, skill or materials upon any chattel or thing in the alteration or improvement of its properties or for the purpose of imparting an additional value to it, so as thereby to be entitled to a lien upon the chattel or thing for the amount or value of the money or skill and material bestowed, has, while the lien exists but not afterwards, in case the amount to which he is entitled remains

unpaid for three months after it ought to have been paid, the right, in addition to any other remedy to which he may be entitled, to sell by auction the chattel or thing on giving one week's notice by advertisement in a newspaper having general circulation in the municipality in which the work was done, setting forth the name of the person indebted, the amount of the debt, a description of the chattel or thing to be sold, the time and place of sale, and the name of the auctioneer, and leaving a like notice in writing at the last known place of residence, if any, of the owner, if he is a resident of the municipality.

(2) Such person shall apply the proceeds of the sale in payment of the amount due to him and the costs of advertising and sale and shall upon application pay over any surplus to the person entitled thereto. R.S.O. 1960, c. 233, s. 48, *amended*. Application  
of proceeds  
of sale

#### FORMS

**49.** The Lieutenant Governor in Council may make regulations prescribing forms and providing for their use. *New*. Forms

#### MISCELLANEOUS

**50.** *The Mechanics' Lien Act, The Mechanics' Lien Amendment Act, 1961-62, The Mechanics' Lien Amendment Act, 1962-63 and The Mechanics' Lien Amendment Act, 1966* are repealed. R.S.O. 1960,  
c. 233;  
1961-62,  
c. 78;  
1962-63,  
c. 79;  
1966, c. 84,  
repealed

**51.** This Act comes into force on a day to be named by the Lieutenant Governor by his proclamation. Commence-  
ment

**52.** This Act may be cited as *The Mechanics' Lien Act*, Short title  
*1968-69*.







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*1st Reading*

December 12th, 1968

*2nd Reading*

February 20th, 1969

*3rd Reading*

June 6th, 1969

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MR. WISHART

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

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**An Act to establish an Institute for the Prevention and  
Cure of Birth Defects**

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MR. SHULMAN

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#### EXPLANATORY NOTE

The Bill provides for the establishment of an Institute for research into the causes and prevention or treatment of birth defects and for education in this field.

BILL 37

1968-69

## An Act to establish an Institute for the Prevention and Cure of Birth Defects

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** In this Act,

Interpre-  
tation

- (a) "birth defect" means any malfunction, malformation or disease with which a child is born;
- (b) "Institute" means the Birth Defects Institute;
- (c) "Minister" means the Minister of Health;
- (d) "physician" means a duly qualified medical practitioner.

**2.—**(1) A corporation to be known as the Birth Defects Institute is established. Institute  
established

(2) *The Corporations Act* does not apply to the Institute. R.S.O. 1960,  
c. 71 does  
not apply

**3.—**(1) The Institute shall be composed of not fewer than seven and not more than twenty members appointed by the Lieutenant Governor in Council. Membership

(2) The Lieutenant Governor in Council may designate one of the members to be chairman of the Institute. Chairman

**4.** Five members of the Institute constitute a quorum. Quorum

**5.** The head office of the Institute shall be at or near the City of Toronto. Head office

**6.** The objects of the Institute are and it has power, Objects and  
powers

- (a) to conduct and promote a programme of research in the incidence and causes of birth defects and in

methods of treatment, prevention and cure of birth defects and allied diseases and to publish from time to time the results of its programme;

- (b) to conduct and promote programmes of professional education and training of medical students, physicians, nurses, scientists and technicians in the causes and the methods of treatment, prevention and cure of birth defects; and
- (c) to conduct and promote clinical counselling services in appropriate places.

Further  
powers

**7.**—(1) For the furtherance of its objects, the Institute may,

- (a) establish, conduct, manage and operate facilities for research in the incidence and causes of birth defects and in methods of treatment, prevention and cure of birth defects and allied diseases;
- (b) enter into agreements with universities, hospitals and other institutions,
  - (i) for the conduct of research for the purposes set out in clause *a*, and
  - (ii) for the provision of clinical counselling services.

Idem,  
grants

(2) The Institute may make such grants as are deemed by the Institute necessary or desirable for the furtherance of its objects.

Reports  
of birth  
defects

**8.**—(1) Every physician who attends the birth of a child having a birth defect or, where no physician attends, the physician who attends the mother or child for post-natal care shall report to the Institute the particulars of the birth defect and such other information and records in his possession as the Institute requests.

Information  
confidential  
and  
privileged

(2) All information acquired by the Institute under subsection 1 is confidential and privileged in the hands of the Institute to the same extent as it is in the hands of the physician who supplied it, except that this subsection shall not preclude the Institute from publishing analyses of the reports and information for scientific and public health purposes in such a manner that the persons concerned remain anonymous.

**9.** The Institute may make such by-laws as are deemed <sup>By-laws</sup> expedient for its constitution and the administration of its affairs, and may do such other things as are deemed necessary or advisable to carry out its objects.

**10.** The Institute may acquire by purchase or lease any <sup>Acquisition of land</sup> land and buildings, and may erect buildings, and may acquire such equipment, instruments, appliances, materials and other things as are deemed necessary or advisable to carry out its objects.

**11.**—(1) The Institute may employ a director and such <sup>Officers and staff</sup> officers, clerks and servants as are deemed expedient.

(2) The Institute may engage the services of such experts <sup>Experts</sup> and other persons as are deemed expedient.

**12.** Each member of the Institute shall be paid his proper <sup>Expenses</sup> travelling and other expenses incurred in the work of the Institute.

**13.** The funds of the Institute consist of moneys received <sup>Funds</sup> by it from any source, including moneys appropriated for its use by the Legislature, and the Institute may disburse, expend or otherwise deal with any of its funds in such manner as it deems proper.

**14.** The accounts and financial transactions of the In- <sup>Audit</sup> stitute shall be audited annually by the Provincial Auditor, who shall make a report thereon to the Institute and to the Minister, and the cost of the audit and report shall be paid out of the funds of the Institute.

**15.** The Institute shall make a report annually to the <sup>Annual report</sup> Minister, who shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session.

**16.**—(1) This Act, except section 8, comes into force on <sup>Commencement</sup> the day it receives Royal Assent.

(2) Section 8 comes into force on a day to be named by the <sup>Idem</sup> Lieutenant Governor by his proclamation.

**17.** This Act may be cited as *The Birth Defects Institute* <sup>Short title</sup> Act, 1968-69.







An Act to establish an Institute for the  
Prevention and Cure of Birth Defects

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*1st Reading*

December 12th, 1968

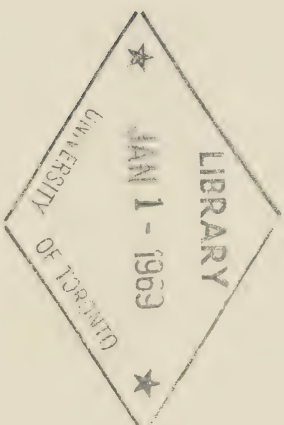
*2nd Reading*

*3rd Reading*

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MR. SHULMAN

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## BILL 38

56

2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

**An Act to provide for the Certification of Dealers and Persons  
engaged in the fitting and selling of Hearing Aids**

MR. SHULMAN

TORONTO

PRINTED AND PUBLISHED BY FRANK FOGG, QUEEN'S PRINTER

#### EXPLANATORY NOTE

The Bill requires a person engaged in the sale of or practice of fitting hearing aids to be the holder of a certificate of registration issued by the Minister of Health.

Requirements for registration are specified and provision is made for the examination of applicants for registration. Certificates of registration may be suspended or revoked by the Minister of Health on grounds specified in the Bill, and appeals from suspension or revocation may be made to a judge of a county or district court. The Advisory Council on Hearing Aids is established and is empowered to advise the Minister of Health on all matters relating to the Bill.

BILL 38

1968-69

## An Act to provide for the Certification of Dealers and Persons engaged in the fitting and selling of Hearing Aids

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** In this Act,

Interpre-  
tation

- (a) "certificate of registration" means a certificate of registration issued by the Minister under this Act;
- (b) "Council" means the Advisory Council on Hearing Aids;
- (c) "Department" means the Department of Health;
- (d) "hearing aid" means any instrument or device designed for or represented as aiding, improving or correcting defective human hearing and any parts, attachments or accessories of such an instrument or device;
- (e) "Minister" means the Minister of Health;
- (f) "practice of fitting hearing aids" means the evaluation or measurement of the powers or range of human hearing by means of an audiometer or by any other means devised, and the consequent selection or adaption or sale of hearing aids intended to compensate for hearing loss;
- (g) "prescribed" means prescribed by the regulations;
- (h) "regulations" means the regulations made under this Act;
- (i) "unethical conduct" means,

- (i) the obtaining of any fee or the making of any sale by fraud or misrepresentation,
- (ii) employing directly or indirectly any suspended or unregistered person to perform any work covered by this Act,
- (iii) using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia or any other representation, however disseminated or published, which is misleading, deceiving, improbable or untruthful,
- (iv) advertising a particular model, type or kind of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase or are dissuaded from purchasing the advertised model, type or kind, where it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model, type or kind than that advertised,
- (v) representing that the services or advice of a duly qualified medical practitioner will be used or made available in the selection, fitting, adjustment, maintenance or repair of hearing aids when that is not true, or using the word "doctor", "clinic" or other like words, abbreviations or symbols which tend to connote the medical profession when such use is not accurate,
- (vi) habitual intemperance,
- (vii) gross immorality,
- (viii) permitting another to use his certificate.

Delegation  
of  
Minister's  
powers

**2.** The Minister may delegate any of the powers conferred upon him by or under this Act to the Deputy Minister of the Department or any other official of the Department designated by the Minister.

Unauthor-  
ized  
practice  
prohibited

**3.—(1)** No person shall engage in the sale of or practice of fitting hearing aids or display a sign or in any other way advertise or hold himself out as a person who practises the fitting of hearing aids unless he holds a current, unsuspended, unrevoked certificate of registration issued by the Minister as provided in this Act.

(2) The certificate required by subsection 1 shall be kept <sup>Posting of certificates</sup> conspicuously posted in the holder's office or place of business at all times.

4. Any person who practises the fitting of or dealing in <sup>Receipts</sup> hearing aids shall deliver to each person supplied with a hearing aid by him or at his order or direction, a receipt which shall contain his signature and show the address of his regular place of practice and the number of his certificate, together with a specification of the hearing aid furnished and the amount charged therefor.

5.—(1) This Act does not apply to a person while he is <sup>Saving as to institutions of higher education, etc.</sup> engaged in the practice of fitting hearing aids if his practice is part of the academic curriculum of an accredited institution of higher education or part of a program conducted by a public, charitable institution or non-profit organization, that is primarily supported by voluntary contributions.

(2) This Act shall not be construed to prevent a duly <sup>Saving as to duly qualified medical practitioners</sup> qualified medical practitioner from treating or fitting hearing aids to the human ear.

6. An applicant for registration shall pay the prescribed <sup>Registration requirements</sup> fee and shall show to the satisfaction of the Minister that he,

- (a) is a resident of Ontario;
- (b) is a person of good moral character;
- (c) is twenty-one years of age or older;
- (d) has Grade 12 standing or such other academic standing as is, in the opinion of the Minister, equivalent thereto or has continuously engaged in the practice of fitting hearing aids in Ontario during the three years preceding the date this Act comes into force; and
- (e) is free of contagious or infectious disease.

7.—(1) An applicant for registration who is notified by <sup>Written and practical tests</sup> the Minister that he has fulfilled the requirements of section 6 shall appear at a time and place and before such persons as the Minister may designate, to be examined by written and practical tests in order to demonstrate that he is qualified to practise the fitting of hearing aids.

(2) The Minister or persons designated by him shall hold <sup>Examinations to be held yearly</sup> at least one examination of the type prescribed in subsection 1 in each year, and such additional examinations as the volume of applications may make appropriate.



Content of  
examina-  
tions

**8.** The examination provided in subsection 1 of section 7 shall consist of,

- (a) tests of knowledge in the following areas as they pertain to the fitting of hearing aids,
  - (i) basic physics of sound,
  - (ii) the human hearing mechanism, including the science of hearing and the causes and rehabilitation of abnormal hearing and hearing disorders,
  - (iii) structure and function of hearing aids; and
- (b) tests of proficiency in the following techniques as they pertain to the fitting of hearing aids,
  - (i) pure tone audiometry, including air conduction testing and bone conduction testing,
  - (ii) live voice or recorded voice speech audiometry, including speech reception, threshold testing and speech discrimination testing,
  - (iii) effective masking,
  - (iv) recording and evaluation of audiograms and speech audiometry to determine hearing aid candidacy,
  - (v) selection and adaption of hearing aids and testing of hearing aids,
  - (vi) taking earmold impressions.

Certificate  
of  
registration

**9.—(1)** Upon payment of the prescribed fee, the Minister shall register each applicant who satisfactorily passes the examination and thereupon the Minister shall issue to the applicant a certificate of registration.

Duration of  
certificate

**(2)** A certificate of registration is effective for one year from the date of its issue.

Suspension  
or revo-  
cation of  
certificate

**10.—(1)** Any person registered under this Act may, after a hearing of which he has received not less than ten days notice, have his certificate revoked or suspended for a fixed period by the Minister for any of the following causes:

1. His conviction of an offence involving moral turpitude.

2. Where his certificate has been secured by fraud or deceit practised upon the Minister.
3. For unethical conduct, or for gross ignorance or inefficiency in his profession.
4. Practising while knowingly suffering from a contagious or infectious disease.
5. Advertising professional methods or professional superiority.
6. Practising the fitting of hearing aids under a false or alias name.

(2) For the purposes of this section, the record of conviction, or a certified copy thereof certified by the clerk of the court or by the judge in whose court the conviction is had, shall be conclusive evidence of such conviction. <sup>Evidence of conviction</sup>

(3) At the hearing referred to in subsection 1, the person registered is entitled to hear the evidence, cross-examine, call witnesses, present argument and be represented by counsel or agent. <sup>Hearing</sup>

(4) Notice of the decision of the Minister following a hearing under subsection 1, together with reasons in writing therefor, shall be served upon the person affected thereby, either personally or by registered mail addressed to such person at his last known place of address. <sup>Notice of decision</sup>

(5) Where the person affected by a decision after a hearing under subsection 1 deems himself aggrieved thereby, he may, within five days of receipt of the decision, appeal the decision to a judge of the county or district court of the county or district within which he carries on business, and the judge may confirm, revoke or modify the decision. <sup>Appeal</sup>

**11.**—(1) The Advisory Council on Hearing Aids is hereby established and shall consist of five members to be appointed by the Lieutenant Governor in Council. <sup>Advisory Council on Hearing Aids established</sup>

(2) Members of the Council shall be residents of Ontario. <sup>Qualification of members</sup>

(3) One member shall be a duly qualified medical practitioner who holds certification of otolaryngology from The Royal College of Physicians and Surgeons of Canada. <sup>Idem</sup>

(4) Three members shall be persons experienced in the fitting of hearing aids, who possess the qualifications pre- <sup>Idem</sup>

scribed in section 6, but all successors to the position of such members, who are appointed to the Council after the date on which the Minister first issues a certificate of registration as provided in section 9, shall be persons who hold valid certificates of registration under this Act.

Idem

(5) No member of the Council shall be an employee of the Department.

Duties of Council

**12.—**(1) The Council shall have the responsibility and duty of advising the Minister in all matters relating to this Act, shall prepare the examinations required by this Act, subject to the approval of the Minister, and shall assist the Minister in carrying out the provisions of this Act.

Minister to be guided

(2) The Minister shall consider and be guided by the recommendations of the Council in all matters relating to this Act.

Meetings of Council

**13.—**(1) The Council shall meet at least once each year at a place and time determined by the Council.

Idem

(2) The Council shall also meet at such other times and places as are specified by the Minister.

Regulations

**14.** The Lieutenant Governor in Council may make regulations,

- (a) prescribing the fees payable on an application for registration and on the issuance of a certificate of registration;
- (b) prescribing forms and providing for their use;
- (c) governing the conduct of meetings of the Council;
- (d) regulating the practice and procedure on hearings under section 10;
- (e) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

Offence

**15.—**(1) Any person who contravenes any of the provisions of this Act is guilty of an offence and liable on summary conviction to a fine of not more than \$500 or to imprisonment for not more than ninety days, or to both.

(2) Where any provision of this Act is contravened, in addition to any proceeding had under subsection 1, such <sup>Power to restrain by action</sup> contravention may be restrained by action at the instance of the Minister.

**16.** This Act comes into force on a day to be named by <sup>Commence-</sup>ment the Lieutenant Governor by his proclamation.

**17.** This Act may be cited as *The Hearing Aid Sales Act*, <sup>Short title</sup> 1968-69.





An Act to provide for the Certification  
of Dealers and Persons engaged in the  
fitting and selling of Hearing Aids

*1st Reading*

December 16th, 1968

*2nd Reading*

*3rd Reading*

MR. SHULMAN





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356

BILL 39

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

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An Act to amend The Insurance Act

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MR. SHULMAN

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#### EXPLANATORY NOTE

The amendment prevents binding settlements or releases from being entered into by accident victims in haste or while under the stress of recent injury.

BILL 39

1968-69

## An Act to amend The Insurance Act

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** *The Insurance Act* is amended by adding thereto the following section: R.S.O. 1960,  
c. 190,  
amended

104a. Any agreement, release, waiver or settlement entered into by an injured person within fifteen days after the injury was incurred and given or entered into in respect of any claim under a policy of automobile insurance or accident insurance is voidable by the injured person by notice in writing delivered to the insurer or any office of the insurer or its agent or adjuster within thirty days after the agreement, release, waiver or settlement is entered into. Releases  
and  
settlements  
voidable

**2.** This Act may be cited as *The Insurance Amendment Act, 1968-69*. Short title

An Act to amend The Insurance Act

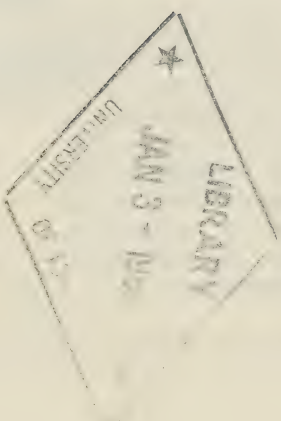
*1st Reading*

December 17th, 1968

*2nd Reading*

*3rd Reading*

MR. SHULMAN



## BILL 40

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

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**An Act to provide for the Control of Fumes from Smelters**

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MR. MARTEL

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#### EXPLANATORY NOTE

The purpose of the Bill is to require every smelter which smelts or roasts nickel-copper or iron ore to adopt and carry out a plan that comprises the best practicable means for controlling or preventing the discharge of noxious or offensive gas or fumes, or, where discharged, to render them harmless or inoffensive.

Application for approval of a plan is made to the Ontario Municipal Board, notice thereof being given to all interested government departments and municipalities.

BILL 40

1968-69

## An Act to provide for the Control of Fumes from Smelters

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** In this Act,

Interpre-  
tation

(a) "Board" means the Ontario Municipal Board; and

(b) "smelter" means any person or corporation carrying on any undertaking that includes the smelting or roasting of nickel-copper or iron ore.

**2.** Every smelter, within three months after coming into force of this Act, or within one month after commencing its undertaking, shall prepare and submit to the Board an application for approval of a plan to control or prevent the discharge from the furnaces, chimneys or smokestacks, operated by the smelter of any noxious or offensive gas or fumes or to render such gas or fumes where discharged harmless or inoffensive.

Plan  
to control  
fumes

**3.** Every such application shall include evidence that the plan submitted represents the best practicable means for the purpose in the circumstances.

Evidence  
of best  
plan

**4.** The Board shall forward copies of every such application at the earliest possible date, by registered mail to the Minister of Mines, the Minister of Health, the Minister of Agriculture and Food, the Minister of Municipal Affairs and to the clerk of every municipality within a radius of thirty miles of the undertaking carried on by the smelter.

Notice

**5.** The Board shall fix a date for hearing the application, not less than two months and not more than four months after the receipt thereof, and reasonable notice of such hearing and of any adjournment thereof shall be given by the Board to every Minister and the clerk of every muni-

Hearing



ciality mentioned in section 4, any of whom may appear by counsel or otherwise and adduce evidence and make representations for or against the plan submitted or any alternative plan.

**Duty of  
Board**

**6.** The Board shall determine whether the plan submitted or any modification or variation thereof represents the best practicable means for the purpose in the circumstances, and whether any other plan ought to be considered or adopted.

**Order of  
Board**

**7.—(1)** Not more than three months after hearing the application, the Board shall make an order either approving the application or a modification or variation thereof or an alternative plan and requiring the smelter to institute and maintain such plan as may be approved by the Board.

**Compliance**

**(2)** The smelter shall, within three months from the date of the order, institute and maintain a plan in conformity therewith.

**Penalty**

**8.** Every smelter who erects, operates, maintains or carries on any undertaking in violation of this Act or fails to comply with any order of the Board, is guilty of an offence and on summary conviction is liable to a penalty of \$1,000, and each day's continuance of such violation or failure to comply shall constitute a new and distinct offence.

**Acts of  
officers,  
agents**

**9.** For the purpose of enforcing any penalty under any of the provisions of this Act, or enforcing any order of the Board made under this Act, the act, omission, or failure of any officer, agent, or other person acting for or employed by the smelter shall, in every case, be also deemed to be the act, omission or failure of the smelter as well as that of the officer, agent or other person.

**Applica-  
tion of  
R.S.O. 1960,  
c. 86**

**10.** Nothing in this Act excludes the operation of any of the provisions of *The Damage by Fumes Arbitration Act*.

**Short title**

**11.** This Act may be cited as *The Fumes Control Act, 1968-69*.







An Act to provide  
for the Control of Fumes from Smelters

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*1st Reading*

December 17th, 1968

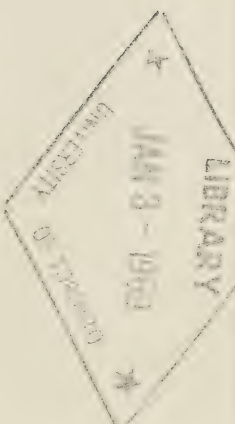
*2nd Reading*

*3rd Reading*

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MR. MARTEL

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## BILL 41

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

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**The Ontario College of Art Act, 1968-69**

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MR. DAVIS

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TORONTO

PRINTED AND PUBLISHED BY FRANK FOGG, QUEEN'S PRINTER

#### EXPLANATORY NOTE

This Bill reflects the recommendations of the report on the organizational structure and administration of the Ontario College of Art.



## BILL 41

1968-69

## The Ontario College of Art Act, 1968-69

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

## 1. In this Act,

Interpre-  
tation

- (a) "academic staff" means the teachers, chairmen of teaching departments, and directors of academic divisions of the Ontario College of Art;
- (b) "College" means the Ontario College of Art;
- (c) "Council" means the Council of the Ontario College of Art. 1961-62, c. 15, s. 1, *amended*.

## 2.—(1) The Ontario College of Art is continued.

College

(2) The object of the College is to provide the opportunity and environment for the education and training of students and teachers in the fine and applied arts. 1961-62, c. 15, s. 2, *amended*.

3.—(1) The Council of the Ontario College of Art is continued as a body corporate and, within two months after this Act comes into force, the Council shall be reconstituted to consist of,

Council  
continued,  
composition

- (a) the President;
- (b) nine members appointed by the Lieutenant Governor in Council;
- (c) six members elected from and by the full-time academic staff; and
- (d) three members elected from and by the students registered as full-time students at the College.

First  
election

(2) The Council, within two months after this Act comes into force, shall provide for and conduct the first election of members under clauses *c* and *d* of subsection 1.

First  
appoint-  
ments

(3) Of the first members appointed under clause *b* of subsection 1, one-third shall be appointed to hold office for one year, one-third for two years and one-third for three years, and in each year thereafter three members shall be appointed to hold office for three years.

First  
election by  
academic  
staff

(4) Of the first members elected under clause *c* of subsection 1, one-third shall be elected to hold office for one year, one-third for two years and one-third for three years, and in each year thereafter two members shall be elected to hold office for three years.

First  
election  
by students

(5) Of the first members elected under clause *d* of subsection 1, two shall be elected to hold office for one year and one for two years, and in each year thereafter one member shall be elected to hold office for one year and one for two years, and the question as to which of such members shall hold office for one year or two years shall be determined as may be provided for in the by-laws of the Council.

Eligibility  
of students

(6) Every person registered as a full-time student at the College is eligible to be elected as a member of the Council under clause *d* of subsection 1.

Maximum  
term for  
students

(7) A member elected under clause *d* of subsection 1 ceases to hold office when he ceases to be registered as a full-time student at the College, and no such member shall in any event hold office for longer than three years.

Eligibility  
for re-  
appoint-  
ment or  
re-election

(8) Subject to subsection 7, members of Council if otherwise qualified are eligible for re-appointment or re-election.

Attendance  
at meetings

(9) If within any fiscal year of the College a member of the Council not having been granted leave of absence by the Council attends less than 50 per cent of the regular meetings of the Council, he shall *ipso facto* vacate his office and the Council by resolution shall declare his membership vacant.

Vacancy

(10) Where a vacancy on the Council occurs before the term of office for which a member has been appointed or elected has expired, the vacancy shall be filled in the same manner and by the same authority as the member whose membership is vacant was appointed or elected, as the case may be, and the member so appointed or elected shall hold office for the remainder of the term of office of the member whose membership is vacant.

(9) The Council until reconstituted in accordance with this <sup>Present Council</sup> section shall consist of the present members of the Council. 1961-62, c. 15, s. 3, *amended*.

4. The Council shall elect a chairman from among the <sup>Chairman</sup> members appointed by the Lieutenant Governor in Council and, in the case of the absence or illness of the chairman, the Council may appoint one of its members to act as chairman *pro tempore*, and the member so appointed shall act as and have all the powers of the chairman. 1961-62, c. 15, s. 11, cl. a, *amended*.

5. Eight members, including not fewer than four appointed <sup>Quorum</sup> members and not fewer than four elected members, constitute a quorum of the Council. 1961-62, c. 15, s. 11, cl. d, *amended*.

6.—(1) The government, conduct, management and control <sup>Powers of Council</sup> of the College and of its property, revenues, expenditures, business and affairs are vested in the Council, and the Council has all powers necessary or convenient to perform its duties and achieve the object of the College and, without limiting the generality of the foregoing, may,

- (a) appoint and remove the President;
- (b) appoint and remove the heads of all divisions and departments, administrative officers, teaching staff and such other officers and employees as the Council deems necessary or expedient for the purposes of the College;
- (c) fix the numbers, duties, salaries and other emoluments of members of the staff of the College;
- (d) appoint such committees and boards, including divisional academic committees and boards, as it deems advisable and confer upon any of such committees or boards authority to act for the Council with respect to any matter or classes of matters;
- (e) establish such advisory bodies as it deems advisable;
- (f) create such divisions and departments as it deems advisable;
- (g) control, regulate and determine the educational policy of the College;

- (h) determine the courses of study and standards for admission to the College and for continued membership therein, and the qualifications for diplomas;
- (i) conduct examinations and appoint examiners;
- (j) deal with all matters arising in connection with the awarding of scholarships, bursaries, medals, prizes and other awards;
- (k) confer upon students of the College the diploma of "Associate of the Ontario College of Art" and the right to affix the letters "A.O.C.A." after their names, and issue such certificates of proficiency as may be provided for in the by-laws of the Council;
- (l) make by-laws and regulations for the conduct of its affairs, including the election of members.

Appoint-  
ment and  
removal of  
officers

(2) No person shall be appointed or removed as head of a division or department, as a senior administrative officer or as a member of the teaching staff of the College, except on the recommendation of the President. 1961-62, c. 15, ss. 4, 6, 11, *part, amended*.

President

**7.** The President of the College is the chief executive officer of the College. 1961-62, c. 15, s. 5, *amended*.

Affiliation  
with  
university

**8.** The College may be affiliated with any university in Ontario where arrangements may be considered expedient for the use of common instruction and the granting of degrees. 1961-62, c. 15, s. 7.

Arrange-  
ments with  
Department  
of  
Education

**9.** The Council may arrange with the Department of Education for courses and examinations for teachers of art and supervisors of art instructors in schools in Ontario. 1961-62, c. 15, s. 8.

Property

**10.** The Council may purchase or otherwise acquire, take by gift, devise or bequest and hold such real and personal property as it may deem necessary for the purposes of the College, and may mortgage, sell or otherwise dispose of the same as occasion requires. 1961-62, c. 15, s. 9, *amended*.

Annual  
report

**11.—(1)** The Council shall, after the close of each fiscal year, file with the Minister of University Affairs an annual report upon the affairs of the College.

(2) The Minister shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session. 1961-62, c. 15, s. 12, *amended*.

**12.** *The College of Art Act, 1961-62* is repealed.

1961-62,  
c. 15,  
repealed

**13.** This Act comes into force on a day to be named by the Lieutenant Governor by his proclamation.

Commence-  
ment

**14.** This Act may be cited as *The Ontario College of Art Act, 1968-69*.

Short title



The Ontario College of Art Act, 1968-69

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*1st Reading*

December 18th, 1968

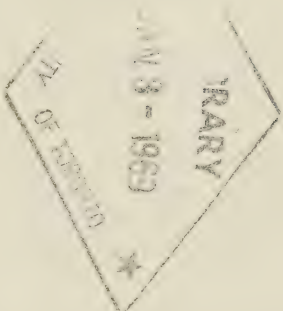
*2nd Reading*

*3rd Reading*

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Mr. DAVIS

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## BILL 41

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
18 ELIZABETH II, 1968-69

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**The Ontario College of Art Act, 1968-69**

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MR. DAVIS

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## BILL 41

1968-69

## The Ontario College of Art Act, 1968-69

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

## 1. In this Act,

Interpre-  
tation

- (a) "academic staff" means the teachers, chairmen of teaching departments, and directors of academic divisions of the Ontario College of Art;
- (b) "College" means the Ontario College of Art;
- (c) "Council" means the Council of the Ontario College of Art. 1961-62, c. 15, s. 1, *amended*.

## 2.—(1) The Ontario College of Art is continued.

College

(2) The object of the College is to provide the opportunity and environment for the education and training of students and teachers in the fine and applied arts. 1961-62, c. 15, s. 2, *amended*.

Object

3.—(1) The Council of the Ontario College of Art is continued as a body corporate and, within two months after this Act comes into force, the Council shall be reconstituted to consist of,

Council  
continued,  
composition

- (a) the President;
- (b) nine members appointed by the Lieutenant Governor in Council;
- (c) six members elected from and by the full-time academic staff; and
- (d) three members elected from and by the students registered as full-time students at the College.

First  
election

(2) The Council, within two months after this Act comes into force, shall provide for and conduct the first election of members under clauses *c* and *d* of subsection 1.

First  
appoint-  
ments

(3) Of the first members appointed under clause *b* of subsection 1, one-third shall be appointed to hold office for one year, one-third for two years and one-third for three years, and in each year thereafter three members shall be appointed to hold office for three years.

First  
election by  
academic  
staff

(4) Of the first members elected under clause *c* of subsection 1, one-third shall be elected to hold office for one year, one-third for two years and one-third for three years, and in each year thereafter two members shall be elected to hold office for three years.

First  
election  
by students

(5) Of the first members elected under clause *d* of subsection 1, two shall be elected to hold office for one year and one for two years, and in each year thereafter one member shall be elected to hold office for one year and one for two years, and the question as to which of such members shall hold office for one year or two years shall be determined as may be provided for in the by-laws of the Council.

Eligibility  
of students

(6) Every person registered as a full-time student at the College is eligible to be elected as a member of the Council under clause *d* of subsection 1.

Maximum  
term for  
students

(7) A member elected under clause *d* of subsection 1 ceases to hold office when he ceases to be registered as a full-time student at the College, and no such member shall in any event hold office for longer than three years.

Eligibility  
for re-  
appoint-  
ment or  
re-election

(8) Subject to subsection 7, members of Council if otherwise qualified are eligible for re-appointment or re-election.

Attendance  
at meetings

(9) If within any fiscal year of the College a member of the Council not having been granted leave of absence by the Council attends less than 50 per cent of the regular meetings of the Council, he shall *ipso facto* vacate his office and the Council by resolution shall declare his membership vacant.

Vacancy

(10) Where a vacancy on the Council occurs before the term of office for which a member has been appointed or elected has expired, the vacancy shall be filled in the same manner and by the same authority as the member whose membership is vacant was appointed or elected, as the case may be, and the member so appointed or elected shall hold office for the remainder of the term of office of the member whose membership is vacant.

(9) The Council until reconstituted in accordance with this <sup>Present Council</sup> section shall consist of the present members of the Council. 1961-62, c. 15, s. 3, *amended*.

4. The Council shall elect a chairman from among the <sup>Chairman</sup> members appointed by the Lieutenant Governor in Council and, in the case of the absence or illness of the chairman, the Council may appoint one of its members to act as chairman *pro tempore*, and the member so appointed shall act as and have all the powers of the chairman. 1961-62, c. 15, s. 11, cl. a, *amended*.

5. Eight members, including not fewer than four appointed <sup>Quorum</sup> members and not fewer than four elected members, constitute a quorum of the Council. 1961-62, c. 15, s. 11, cl. d, *amended*.

6.—(1) The government, conduct, management and control <sup>Powers of Council</sup> of the College and of its property, revenues, expenditures, business and affairs are vested in the Council, and the Council has all powers necessary or convenient to perform its duties and achieve the object of the College and, without limiting the generality of the foregoing, may,

- (a) appoint and remove the President;
- (b) appoint and remove the heads of all divisions and departments, administrative officers, teaching staff and such other officers and employees as the Council deems necessary or expedient for the purposes of the College;
- (c) fix the numbers, duties, salaries and other emoluments of members of the staff of the College;
- (d) appoint such committees and boards, including divisional academic committees and boards, as it deems advisable and confer upon any of such committees or boards authority to act for the Council with respect to any matter or classes of matters;
- (e) establish such advisory bodies as it deems advisable;
- (f) create such divisions and departments as it deems advisable;
- (g) control, regulate and determine the educational policy of the College;

- (h) determine the courses of study and standards for admission to the College and for continued membership therein, and the qualifications for diplomas;
- (i) conduct examinations and appoint examiners;
- (j) deal with all matters arising in connection with the awarding of scholarships, bursaries, medals, prizes and other awards;
- (k) confer upon students of the College the diploma of "Associate of the Ontario College of Art" and the right to affix the letters "A.O.C.A." after their names, and issue such certificates of proficiency as may be provided for in the by-laws of the Council;
- (l) make by-laws and regulations for the conduct of its affairs, including the election of members.

Appoint-  
ment and  
removal of  
officers

(2) No person shall be appointed or removed as head of a division or department, as a senior administrative officer or as a member of the teaching staff of the College, except on the recommendation of the President. 1961-62, c. 15, ss. 4, 6, 11, *part, amended.*

President

**7.** The President of the College is the chief executive officer of the College. 1961-62, c. 15, s. 5, *amended.*

Affiliation  
with  
university

**8.** The College may be affiliated with any university in Ontario where arrangements may be considered expedient for the use of common instruction and the granting of degrees. 1961-62, c. 15, s. 7.

Arrange-  
ments with  
Department  
of  
Education

**9.** The Council may arrange with the Department of Education for courses and examinations for teachers of art and supervisors of art instructors in schools in Ontario. 1961-62, c. 15, s. 8.

Property

**10.** The Council may purchase or otherwise acquire, take by gift, devise or bequest and hold such real and personal property as it may deem necessary for the purposes of the College, and may mortgage, sell or otherwise dispose of the same as occasion requires. 1961-62, c. 15, s. 9, *amended.*

Annual  
report

**11.—(1)** The Council shall, after the close of each fiscal year, file with the Minister of University Affairs an annual report upon the affairs of the College.



(2) The Minister shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session. 1961-62, c. 15, s. 12, *amended*.

**12.** *The College of Art Act, 1961-62* is repealed.

1961-62,  
c. 15,  
repealed

**13.** This Act comes into force on a day to be named by the Lieutenant Governor by his proclamation.

Commence-  
ment

**14.** This Act may be cited as *The Ontario College of Art Act, 1968-69*.

Short title

The Ontario College of Art Act, 1968-69

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*1st Reading*

December 18th, 1968

*2nd Reading*

November 20th, 1969

*3rd Reading*

December 2nd, 1969

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MR. DAVIS

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**BILL 42**

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

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**An Act to amend The Public Health Act**

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MR. DEANS

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TORONTO

PRINTED AND PUBLISHED BY FRANK FOGG, QUEEN'S PRINTER

#### EXPLANATORY NOTE

The Bill requires that drugs and medicines be sold only in child-proof containers.

## BILL 42

1968-69

## An Act to amend The Public Health Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. *The Public Health Act* is amended by adding thereto the following section: R.S.O. 1960, c. 321, amended

## CHILD-PROOF CONTAINERS

- 79.—(1) No person shall sell or offer for sale a drug to which *The Pharmacy Act* applies or a medicine registered under the *Proprietary or Patent Medicine Act* (Canada) that is not contained in a container that bears the mark of approval of a testing organization under subsection 2. Sale of drugs and medicines in approved containers R.S.O. 1960, c. 295 R.S.C. 1952, c. 220

- (2) The Lieutenant Governor in Council may make regulations designating an organization to test and approve the types, designs and specifications of containers suitable to make the contents inaccessible to small children and providing for the affixing of a mark of approval on containers manufactured in accordance with the approved type, design and specifications. Regulations

2. This Act comes into force on the 1st day of July, 1969. Commencement

3. This Act may be cited as *The Public Health Amendment Act, 1968-69*. Short title

An Act to amend The Public Health Act

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*1st Reading*

December 18th, 1968

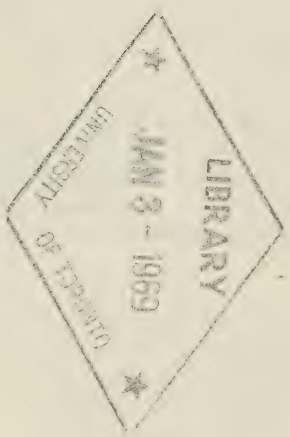
*2nd Reading*

*3rd Reading*

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MR. DEANS

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**BILL 43**

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

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**An Act to amend The Highway Traffic Act**

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MR. SHULMAN

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TORONTO

PRINTED AND PUBLISHED BY FRANK FOGG, QUEEN'S PRINTER

#### EXPLANATORY NOTE

The amendment requires persons under eighteen years of age to take an approved driver education course before being issued a driver's licence.

BILL 43

1968-69

## An Act to amend The Highway Traffic Act

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** Section 18 of *The Highway Traffic Act* is amended by adding thereto the following subsection: R.S.O. 1960,  
c. 172, s. 18,  
amended

(1a) A licence shall not be issued to a person under the age of eighteen years to drive or operate a motor vehicle on a highway unless he has satisfactorily completed a driver education course designated by the Lieutenant Governor in Council by regulation. Driver  
education  
courses

**2.** This Act comes into force on the 1st day of July, 1969. Commence-  
ment

**3.** This Act may be cited as *The Highway Traffic Amendment Act, 1968-69*. Short title



An Act to amend The Highway Traffic Act

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*1st Reading*

December 18th, 1968

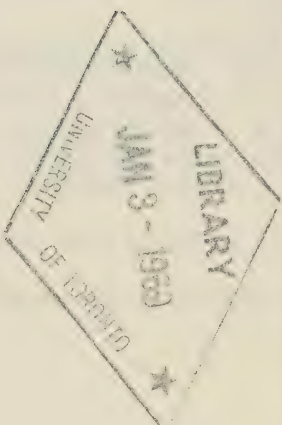
*2nd Reading*

*3rd Reading*

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MR. SHULMAN

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## BILL 44

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

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An Act to amend  
The Municipal and School Tax Credit Assistance Act, 1967

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MR. STOKES

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#### EXPLANATORY NOTE

The Bill removes the obligation to repay tax credits allowed under the Act.

BILL 44

1968-69

## An Act to amend The Municipal and School Tax Credit Assistance Act, 1967

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.**—(1) Subsections 3, 4 and 5 of section 2 of *The Municipal and School Tax Credit Assistance Act, 1967* are repealed. <sup>1967, c. 56, s. 2, subs. 3-5, repealed</sup>

(2) Subsection 7 of the said section 2 is amended by striking out “and the manner in which applications for reimbursement may be made” in the second and third lines, so that the subsection shall read as follows: <sup>1967, c. 56, s. 2, subs. 7, amended</sup>

(7) The Lieutenant Governor in Council may make Regulations regulations prescribing forms for use under this Act and generally for the administration of this Act.

**2.** This Act shall be deemed to have come into force on the 1st day of January, 1967. <sup>Commencement</sup>

**3.** This Act may be cited as *The Municipal and School Tax Credit Assistance Amendment Act, 1968-69*. <sup>Short title</sup>

An Act to amend The Municipal and School  
Tax Credit Assistance Act, 1967

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*1st Reading*

December 18th, 1968

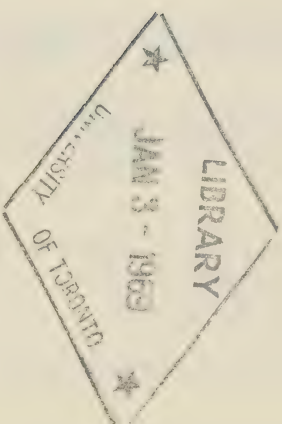
*2nd Reading*

*3rd Reading*

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MR. STOKES

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**BILL 45**

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

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**An Act to amend The Schools Administration Act**

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MR. DAVIS

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#### EXPLANATORY NOTES

SECTION 1—Subsection 1. The amendment is to make it clear that trustees of a separate school board are not excepted from the application of this subsection.

SECTION 1—Subsection 2. The amendment provides for the payment of an honorarium to co-opted members of vocational committees on the same basis as other members of the committee.



BILL 45

1968-69

## An Act to amend The Schools Administration Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Subsection 1 of section 36 of *The Schools Administration Act*, as re-enacted by subsection 1 of section 10 of *The Schools Administration Amendment Act, 1968*, is amended by striking out “trustees” in the first line and inserting in lieu thereof “members of a board of education”, so that the subsection, exclusive of the table, shall read as follows:

R.S.O. 1960,  
c. 361, s. 36,  
subs. 1  
(1968, c. 121,  
s. 10,  
subs. 1),  
amended

- (1) A board may pay to each trustee, except members of a board of education who are not entitled to vote on a motion that affects public schools exclusively, for each month an honorarium not exceeding an amount based on the enrolment on the 30th day of September in the preceding year in all the schools which, on the 1st day of January of the current year, are operated by the board, as follows:

Honorarium  
for trustees

. . . . .

(2) Subsection 3 of the said section 36, as re-enacted by subsection 4 of section 10 of *The Schools Administration Amendment Act, 1968*, is amended by striking out “appointed by the board” in the second and third lines, so that the subsection shall read as follows:

R.S.O. 1960,  
c. 361, s. 36,  
subs. 3  
(1968, c. 121,  
s. 10,  
subs. 4),  
amended

- (3) A board of education may pay to each member of an advisory vocational committee, who is not a trustee, an honorarium for each month not exceeding one-half of the amount provided in subsection 1 based on the enrolment on the 30th day of September in the preceding year in all secondary schools which, on the 1st day of January of the current year, are operated by the board.

Members of  
advisory  
vocational  
committees

R.S.O. 1960, c. 361,  
s. 100a,  
subs. 1  
(1967, c. 90,  
re-enacted s. 22),  
2. Subsection 1 of section 100a of *The Schools Administration Act*, as re-enacted by section 22 of *The Schools Administration Amendment Act, 1967*, is repealed and the following substituted therefor:

Fees for  
non-resident  
pupils,  
calculation

- (1) Where a board provides education for pupils whose fees are receivable from another board, from Canada, or from Ontario, the fees shall be calculated by the use of financial data and average daily enrolment in respect of elementary schools, secondary schools, or classes or schools for trainable retarded children, as the case may be, for the year in which such education is provided,
  - (a) by ascertaining the gross current expenditure for the maintenance of the schools under the jurisdiction of the board, excluding expenditure for transportation, tuition fees and evening courses of study;
  - (b) by ascertaining the total gross revenue from all sources, excluding legislative grants, taxation, tuition fees and costs recoverable from Ontario;
  - (c) by deducting the amount determined under clause *b* from the amount determined under clause *a*;
  - (d) by ascertaining the average daily enrolment as adjusted by the application of the appropriate course weighting factors as prescribed in the regulations for the year in which such education is provided, of pupils at schools under the jurisdiction of the board;
  - (e) by dividing the amount determined under clause *c* by the average daily enrolment as adjusted under clause *d*;
  - (f) by multiplying the average daily enrolment as adjusted by the application of the appropriate course weighting factors, of pupils whose fees are receivable from another board, from Canada, or from Ontario, by the sum of,
    - (i) the amount determined under clause *e*,  
and

SECTION 2. The amendment provides for the calculation of non-resident fees involving the use of a uniform pupil accommodation charge in respect of capital costs, and for the calculation of non-resident fees for trainable retarded children.



- (ii) the pupil accommodation charge as prescribed in the regulations for the year in which such education is provided.

**3.** This Act shall be deemed to have come into force on <sup>Commence-</sup>the 1st day of January, 1969.<sub>ment</sub>

**4.** This Act may be cited as *The Schools Administration* <sup>Short title</sup>  
*Amendment Act, 1968-69.*

An Act to amend  
The Schools Administration Act

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*1st Reading*

December 19th, 1968

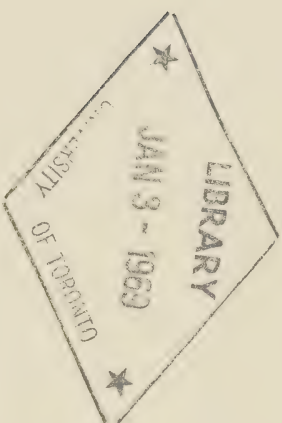
*2nd Reading*

*3rd Reading*

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MR. DAVIS

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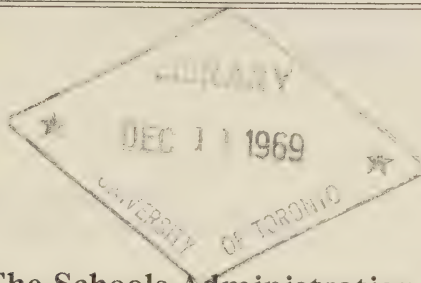


**BILL 45**

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

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**An Act to amend The Schools Administration Act**

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MR. DAVIS

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*(Reprinted as amended by the Education and University Affairs Committee)*



#### EXPLANATORY NOTES

SECTION 1—Subsection 1. The amendment is to make it clear that trustees of a separate school board are not excepted from the application of this subsection.

SECTION 1—Subsection 2. The amendment provides for the payment of an honorarium to co-opted members of vocational committees on the same basis as other members of the committee.

BILL 45

1968-69

## An Act to amend The Schools Administration Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Subsection 1 of section 36 of *The Schools Administration Act*, as re-enacted by subsection 1 of section 10 of *The Schools Administration Amendment Act, 1968*, is amended <sup>R.S.O. 1960, c. 361, s. 36, subs. 1 (1968, c. 121, s. 10, subs. 1), amended</sup> by striking out “trustees” in the first line and inserting in lieu thereof “members of a board of education”, so that the subsection, exclusive of the table, shall read as follows:

- (1) A board may pay to each trustee, except members of a board of education who are not entitled to vote on a motion that affects public schools exclusively, for each month an honorarium not exceeding an amount based on the enrolment on the 30th day of September in the preceding year in all the schools which, on the 1st day of January of the current year, are operated by the board, as follows:

. . . . .

(2) Subsection 3 of the said section 36, as re-enacted by subsection 4 of section 10 of *The Schools Administration Amendment Act, 1968*, is amended <sup>R.S.O. 1960, c. 361, s. 36, subs. 3 (1968, c. 121, s. 10, subs. 4), amended</sup> by striking out “appointed” in the second and third lines, so that the subsection shall read as follows:

- (3) A board of education may pay to each member of an advisory vocational committee, who is not a trustee, an honorarium for each month not exceeding one-half of the amount provided in subsection 1 based on the enrolment on the 30th day of September in the preceding year in all secondary schools which, on the 1st day of January of the current year, are operated by the board. <sup>Members of advisory vocational committees</sup>

Commence-  
ment

**2.** This Act shall be deemed to have come into force on the 1st day of January, 1969.

Short title

**3.** This Act may be cited as *The Schools Administration Amendment Act, 1968-69*.







An Act to amend  
The Schools Administration Act

---

*1st Reading*

December 19th, 1968

*2nd Reading*

November 20th, 1969

*3rd Reading*

---

MR. DAVIS

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*(Reprinted as amended by the Education and  
University Affairs Committee)*



## BILL 45

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

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**An Act to amend The Schools Administration Act**

---

MR. DAVIS

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BILL 45

1968-69

## An Act to amend The Schools Administration Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Subsection 1 of section 36 of *The Schools Administration Act*, as re-enacted by subsection 1 of section 10 of *The Schools Administration Amendment Act, 1968*, is amended <sup>R.S.O. 1960, c. 361, s. 36, subs. 1 (1968, c. 121, s. 10, subs. 1), amended</sup> by striking out “trustees” in the first line and inserting in lieu thereof “members of a board of education”, so that the subsection, exclusive of the table, shall read as follows:

- (1) A board may pay to each trustee, except members of a board of education who are not entitled to vote on a motion that affects public schools exclusively, for each month an honorarium not exceeding an amount based on the enrolment on the 30th day of September in the preceding year in all the schools which, on the 1st day of January of the current year, are operated by the board, as follows:
- . . . . .

(2) Subsection 3 of the said section 36, as re-enacted by subsection 4 of section 10 of *The Schools Administration Amendment Act, 1968*, is amended by striking out “appointed by the board” in the second and third lines, so that the subsection shall read as follows: <sup>R.S.O. 1960, c. 361, s. 36, subs. 3 (1968, c. 121, s. 10, subs. 4), amended</sup>

- (3) A board of education may pay to each member of an advisory vocational committee, who is not a trustee, an honorarium for each month not exceeding one-half of the amount provided in subsection 1 based on the enrolment on the 30th day of September in the preceding year in all secondary schools which, on the 1st day of January of the current year, are operated by the board. <sup>Members of advisory vocational committees</sup>

Commence-  
ment

**2.** This Act shall be deemed to have come into force on the 1st day of January, 1969.

Short title

**3.** This Act may be cited as *The Schools Administration Amendment Act, 1968-69*.









**Government Publications**  
An Act to amend  
The Schools Administration Act

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*1st Reading*

December 19th, 1968

*2nd Reading*

November 20th, 1969

*3rd Reading*

December 2nd, 1969

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Mr. DAVIS

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**BILL 46**

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

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**An Act to amend  
The Secondary Schools and Boards of Education Act**

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MR. DAVIS

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TORONTO

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#### EXPLANATORY NOTES

SECTION 1—Subsection 1. The amendment excepts from the provisions of this Part schools established on lands held by the Crown in right of Canada or Ontario.

Subsection 2. There are a few portions of territory without municipal organization which are not in a school section or a high school district that have been included in a school division. This amendment deems such portions to be a district municipality within the school division.

SECTION 2—Subsection 1. The amendment is to correct a reference.

BILL 46

1968-69

## An Act to amend The Secondary Schools and Boards of Education Act

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.**—(1) Section 81 of *The Secondary Schools and Boards of Education Act*, as enacted by section 8 of *The Secondary Schools and Boards of Education Amendment Act, 1968*, is amended by adding thereto the following subsection:

- (1a) This Part does not apply to a board, school section or high school district heretofore or hereafter established under section 12 of *The Public Schools Act* or under subsection 5 of section 12 or subsection 4a of section 51 of this Act.

(2) Subsection 3 of the said section 81 is amended by striking out “and” at the end of clause *a*, by adding “and” at the end of clause *b* and by adding thereto the following clause:

- (c) any part of territory without municipal organization that is designated by the regulation made under subsection 2 of section 82 as part of a school division and on the 31st day of December, 1968, was not in a school section or in a high school district,

. . . . .

**2.**—(1) Clause *b* of subsection 2 of section 84 of *The Secondary Schools and Boards of Education Act*, as enacted by section 8 of *The Secondary Schools and Boards of Education Amendment Act, 1968*, is amended by striking out “3” in the first line and inserting in lieu thereof “4”, so that the clause shall read as follows:

- (b) subject to subsection 4, all real and personal property vested in such boards and situate in the school division becomes vested in the divisional board.

R.S.O. 1960,  
c. 362, s. 84  
(1968, c. 122,  
s. 8),  
subs. 2,  
cl. d,  
amended

- (2) Clause *d* of subsection 2 of the said section 84 is amended by adding at the commencement thereof "the reserve for working funds, the balance in a reserve or a reserve fund accumulated from transfers from revenue funds and", so that the clause shall read as follows:

- (d) the reserve for working funds, the balance in a reserve or a reserve fund accumulated from transfers from revenue funds and the audited surplus or deficit as at the 31st day of December, 1968, of each such board shall accrue to the credit of, or become the responsibility of, the assessment supporting such board on the 31st day of December, 1968, and shall be apportioned by the arbitrators under this section among the municipalities or parts thereof comprising the area of jurisdiction of such board in the same proportion as the requisition for the year 1968 was apportioned among such municipalities or parts.

R.S.O. 1960,  
c. 362, s. 84  
(1968, c. 122,  
s. 8), subs. 3,  
amended

- (3) Subsection 3 of the said section 84 is amended by inserting after "1968" in the seventh line "except lands and premises used as schools on such 31st day of December", so that the subsection shall read as follows:

#### Arbitration

- (3) Each divisional board shall, on or before the 15th day of March, 1969, appoint three or five arbitrators, who are not members of the divisional board or of a municipal council that has jurisdiction in the school division, who shall value and adjust in an equitable manner the assets and liabilities, as of the 31st day of December, 1968, except lands and premises used as schools on such 31st day of December, of the boards that, before they were dissolved under subsection 2, had jurisdiction wholly in the school division in which the divisional board has jurisdiction.

R.S.O. 1960,  
c. 362, s. 84  
(1968, c. 122,  
s. 8), subs. 4,  
amended

- (4) Subsection 4 of the said section 84 is amended by inserting after "1968" in the ninth line "except lands and premises used as schools on such 31st day of December", so that the subsection shall read as follows:

#### Idem

- (4) Where a board that is dissolved under subsection 2 had jurisdiction in an area that after the 1st day of January, 1969, forms part of two or more school divisions, each divisional board shall, on or before the 15th day of March, 1969, designate two of the

Subsection 2. The amendment provides that the reserve for working funds and the balance in a reserve accumulated from transfers from revenue funds shall be dealt with in the same manner as the audited surplus or deficit.

Subsection 3. The amendment is to exclude lands and premises used as schools from the assets to be valued and adjusted by the arbitrators.

Subsection 4. The amendment is to exclude lands and premises used as schools from the assets to be valued and adjusted by the arbitrators.

Subsection 5. The amendment will permit a divisional board to pay to an arbitrator a fee other than the fee prescribed in section 99 of *The Schools Administration Act*.



arbitrators appointed by it under subsection 3 who shall collectively value and adjust in an equitable manner the assets and liabilities of such board as of the 31st day of December, 1968, except lands and premises used as schools on such 31st day of December, and shall apportion in an equitable manner the obligations under clauses *c* and *f* of subsection 2.

(5) The said section 84 is amended by adding thereto the following subsection: R.S.O. 1960,  
c. 362, s. 84  
(1968, c. 122,  
s. 8),  
amended

(10) Notwithstanding subsection 3 of section 99 of *The Schools Administration Act*, each arbitrator appointed under this section shall be paid such fee for his services as is determined by the divisional board that appointed him. Fees for  
arbitrators  
R.S.O. 1960,  
c. 361

**3.** Part VI of *The Secondary Schools and Boards of Education Act*, as enacted by section 8 of *The Secondary Schools and Boards of Education Amendment Act, 1968*, is amended by adding thereto the following section: R.S.O. 1960,  
c. 362, Pt. VI  
(1968, c. 122,  
s. 8),  
amended

86a.—(1) Where any part of territory without municipal organization that in the year 1968 is not in a school section or a high school district is included in a school division and deemed a district municipality, for the purposes of section 86 the equalized assessment of the property rateable, Equalized  
assessment  
in 1968 in  
territory:  
not in school  
section or  
high school  
district

(a) for public school purposes in the district municipality shall be the assessment upon which rates are levied in the year 1968 under *The Provincial Land Tax Act, 1961-62* on all property rateable for public school purposes in the district municipality; and 1961-62,  
c. 111

(b) for secondary school purposes in the district municipality shall be the assessment upon which rates are levied in the year 1968 under *The Provincial Land Tax Act, 1961-62* on all rateable property in the district municipality,

as adjusted by the application of the equalization factor based on such assessment and provided by the Department of Municipal Affairs.

(2) Where any part of territory without municipal organization that in the year 1968 is in a school section is included in a school division and deemed a district municipality for the purposes of section 86 the equalized assessment of the property rateable, in school  
section

- (a) for public school purposes in the district municipality shall be the assessment upon which rates are levied in the year 1968 by the board of the school section, as adjusted by the application of the equalization factor based on such assessment and provided by the Department of Municipal Affairs; and
- (b) for secondary school purposes in the district municipality shall be the sum of the equalized assessment under clause a and the assessment of the property in the district municipality upon which rates are levied in the year 1968 by the separate school board of a separate school zone all or part of which is within the district municipality, as adjusted by the application of the equalization factor based on such assessment and provided by the Department of Municipal Affairs.

in high  
school  
district but  
not in  
school  
section

- (3) Where any part of territory without municipal organization that in the year 1968 is in a high school district but not in a school section is included in a school division and deemed a district municipality for the purposes of section 86 the equalized assessment of the property rateable,

- (a) for public school purposes in the district municipality shall be the assessment upon which rates are levied in the year 1968 by the board of the high school district on property rateable for public school purposes in the district municipality, as adjusted by the application of the equalization factor based on such assessment and provided by the Department of Municipal Affairs; and
- (b) for secondary school purposes in the district municipality shall be the assessment upon which rates are levied in the year 1968 by the board of the high school district on all the rateable property in the district municipality, as adjusted by the application of the equalization factor based on such assessment and provided by the Department of Municipal Affairs.

R.S.O. 1960,  
c. 362, s. 87,  
(1968, c. 122,  
s. 8),  
amended

4. Section 87 of *The Secondary Schools and Boards of Education Act*, as enacted by section 8 of *The Secondary*

SECTION 3. Provision is made for the apportionment of costs for 1969 in respect of territory without municipal organization that is included in a school division.

SECTION 4. The portions of territory without municipal organization which are not now in a school section but will be included in a school division were not subject to taxation for public school purposes in 1968. For this reason, it is necessary to exclude them from the provisions for an adjusted rate provided in subsections 1, 2 and 3.

SECTION 5. Provision is made for levying rates in 1969 on properties in territory without municipal organization that were included in a school division.

*Schools and Boards of Education Amendment Act, 1968*, is amended by adding thereto the following subsection:

- (6) Subsections 1, 2 and 3 do not apply to a part of territory without municipal organization that is deemed to be a district municipality under clause *b* or *c* of subsection 3 of section 81.

5. Section 88 of *The Secondary Schools and Boards of Education Act*, as enacted by section 8 of *The Secondary Schools and Boards of Education Amendment Act, 1968*, is amended by adding thereto the following subsections:

- (1a) The assessment of all property rateable for public school purposes in territory without municipal organization that is deemed a district municipality upon which rates shall be levied in the year 1969 to raise the sum determined under section 86 for public school purposes shall be,

(a) where the property in the year 1968 is not situate in a school section or a high school district, the assessment upon which rates are levied in the year 1969 under *The Provincial Land Tax Act, 1961-62*; or

(b) where the property in the year 1968 is situate in a school section, the assessment on which taxes for public school purposes in the year 1969 would have been levied by the board of such school section if such board had not been dissolved on the 1st day of January, 1969; or

(c) where the property in the year 1968 is situate in a high school district but not in a school section, the assessment on which taxes for secondary school purposes in the year 1969 would have been levied by the board of such high school district if such board had not been dissolved on the 1st day of January, 1969.

- (1b) The assessment of property rateable for secondary school purposes in territory without municipal organization that is deemed a district municipality upon which rates shall be levied in the year 1969 to raise the sum determined under section 86 for secondary school purposes,

(a) in respect of property rateable for public school purposes under subsection 1a, shall be the assessments determined under subsection 1a; and

(b) in respect of property rateable for separate school purposes shall be,

(i) where the property in the year 1968 is not situate in a school section or a high school district, the assessment upon which rates are levied in the year 1969 under *The Provincial Land Tax Act, 1961-62*, or

(ii) where the property in the year 1968 is situate in a school section, the assessment on which the taxes for separate school purposes in the year 1969 are levied by the board of the separate school zone or would have been levied by such board if the board had not been dissolved on the 1st day of January, 1969, or

(iii) where the property in the year 1968 is situate in a high school district but not in a school section, the assessment on which taxes for secondary school purposes in the year 1969 would have been levied by the board of the high school district if such board had not been dissolved on the 1st day of January, 1969.

R.S.O. 1960,  
c. 362, s. 97  
(1968, c. 122,  
s. 8),  
amended

**6.** Section 97 of *The Secondary Schools and Boards of Education Act*, as enacted by section 8 of *The Secondary Schools and Boards of Education Amendment Act, 1968*, is amended by adding thereto the following subsection:

Application  
of subss. 1, 2

(3) Subsections 1 and 2 do not extend the right acquired by a pupil to attend a school under an order of the Ontario Municipal Board or under an agreement between two or more boards or between a board and the Crown in right of Canada.

R.S.O. 1960,  
c. 362, s. 110  
(1968, c. 122,  
s. 9), subs. 1,  
amended

**7.—**(1) Subsection 1 of section 110 of *The Secondary Schools and Boards of Education Act*, as enacted by section 9 of *The Secondary Schools and Boards of Education Amendment Act, 1968*, is amended by striking out "2" in the eighth line and inserting in lieu thereof "1".



SECTION 6. The amendment is to make it clear that the provisions giving the right to certain pupils to attend school in another school division do not have the effect of extending the right acquired by a pupil to attend a school under an order of the Ontario Municipal Board or an agreement between boards or a board and the Federal Government.

SECTION 7. Subsections 1, 2 and 3 are amended so that the fee is based on the gross cost per pupil in respect of classes or schools for trainable retarded children rather than on twice the fee for other non-resident pupils. Subsection 3 is also amended so that it refers to the residence of the parent or guardian rather than the residence of the child and is thus made consistent with subsections 1 and 2.





(2) Subsection 2 of the said section 110 is amended by striking out "2" in the ninth line and inserting in lieu thereof "1". R.S.O. 1960,  
c. 362, s. 110  
(1968, c. 122,  
s. 9), subs. 2,  
amended

(3) Subsection 3 of the said section 110 is amended by inserting after "but" in the second line "his parent or guardian" and by striking out "2" in the eleventh line and inserting in lieu thereof "1", so that the subsection shall read as follows: R.S.O. 1960,  
c. 362, s. 110  
(1968, c. 122,  
s. 9), subs. 3,  
amended

(3) Where a child is admitted to a school for trainable retarded children but his parent or guardian is resident on lands that are exempt from taxation for school purposes and that have been designated by the Minister as a rural school section for which a board has been appointed under subsection 1 of section 12 of *The Public Schools Act* or that have been designated a high school district for which a board has been appointed under subsection 5 of section 12, the board shall pay to the divisional board a tuition fee in accordance with subsection 1 of section 100a of *The Schools Administration Act*. Admission  
of child  
resident on  
tax-exempt  
lands  
  
R.S.O. 1960,  
cc. 330, 361

**8.**—(1) This Act, except subsection 1 of section 1 and section 7, shall be deemed to have come into force on the 23rd day of July, 1968. Commence-  
ment

(2) Subsection 1 of section 1 and section 7 shall be deemed to have come into force on the 1st day of January, 1969. Idem

**9.** This Act may be cited as *The Secondary Schools and Boards of Education Amendment Act, 1968-69*. Short title

An Act to amend The Secondary Schools  
and Boards of Education Act

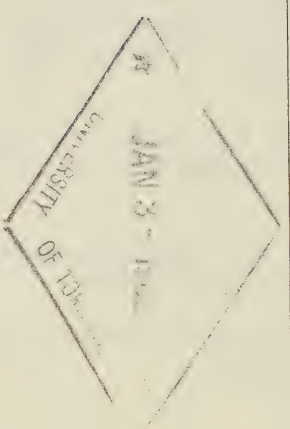
*1st Reading*

December 19th, 1968

*2nd Reading*

*3rd Reading*

MR. DAVIS

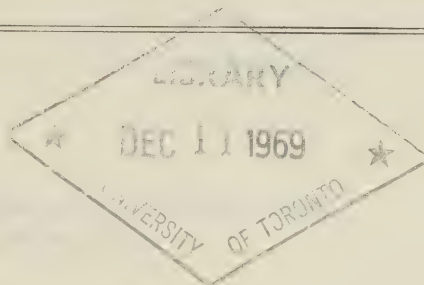


## BILL 46

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

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**An Act to amend  
The Secondary Schools and Boards of Education Act**

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MR. DAVIS

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*(Reprinted as amended by the Education and University Affairs Committee)*

#### EXPLANATORY NOTES

SECTION 1—Subsection 1. The amendment excepts from the provisions of this Part schools established on lands held by the Crown in right of Canada or Ontario.

Subsection 2. There are a few portions of territory without municipal organization which are not in a school section or a high school district that have been included in a school division. This amendment deems such portions to be a district municipality within the school division.

SECTION 2—Subsection 1. The amendment is to correct a reference.

BILL 46

1968-69

## An Act to amend The Secondary Schools and Boards of Education Act

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.**—(1) Section 81 of *The Secondary Schools and Boards of Education Act*, as enacted by section 8 of *The Secondary Schools and Boards of Education Amendment Act, 1968*, is amended by adding thereto the following subsection:

- (1a) This Part does not apply to a board, school section or high school district heretofore or hereafter established under section 12 of *The Public Schools Act* or under subsection 5 of section 12 or subsection 4a of section 51 of this Act.

(2) Subsection 3 of the said section 81 is amended by striking out “and” at the end of clause *a*, by adding “and” at the end of clause *b* and by adding thereto the following clause:

- (c) any part of territory without municipal organization that is designated by the regulation made under subsection 2 of section 82 as part of a school division and on the 31st day of December, 1968, was not in a school section or in a high school district,

. . . . .

**2.**—(1) Clause *b* of subsection 2 of section 84 of *The Secondary Schools and Boards of Education Act*, as enacted by section 8 of *The Secondary Schools and Boards of Education Amendment Act, 1968*, is amended by striking out “3” in the first line and inserting in lieu thereof “4”, so that the clause shall read as follows:

- (b) subject to subsection 4, all real and personal property vested in such boards and situate in the school division becomes vested in the divisional board.

R.S.O. 1960,  
c. 362, s. 84  
(1968, c. 122,  
s. 8),  
subs. 2,  
cl. d,  
amended

- (2) Clause *d* of subsection 2 of the said section 84 is amended by adding at the commencement thereof "the reserve for working funds, the balance in a reserve or a reserve fund accumulated from transfers from revenue funds and", so that the clause shall read as follows:

- (d) the reserve for working funds, the balance in a reserve or a reserve fund accumulated from transfers from revenue funds and the audited surplus or deficit as at the 31st day of December, 1968, of each such board shall accrue to the credit of, or become the responsibility of, the assessment supporting such board on the 31st day of December, 1968, and shall be apportioned by the arbitrators under this section among the municipalities or parts thereof comprising the area of jurisdiction of such board in the same proportion as the requisition for the year 1968 was apportioned among such municipalities or parts.

R.S.O. 1960,  
c. 362, s. 84  
(1968, c. 122,  
s. 8), subs. 3,  
amended

- (3) Subsection 3 of the said section 84 is amended by inserting after "1968" in the seventh line "except lands and premises used as schools on such 31st day of December", so that the subsection shall read as follows:

#### Arbitration

- (3) Each divisional board shall, on or before the 15th day of March, 1969, appoint three or five arbitrators, who are not members of the divisional board or of a municipal council that has jurisdiction in the school division, who shall value and adjust in an equitable manner the assets and liabilities, as of the 31st day of December, 1968, except lands and premises used as schools on such 31st day of December, of the boards that, before they were dissolved under subsection 2, had jurisdiction wholly in the school division in which the divisional board has jurisdiction.

R.S.O. 1960,  
c. 362, s. 84  
(1968, c. 122,  
s. 8), subs. 4,  
amended

- (4) Subsection 4 of the said section 84 is amended by inserting after "1968" in the ninth line "except lands and premises used as schools on such 31st day of December", so that the subsection shall read as follows:

#### Idem

- (4) Where a board that is dissolved under subsection 2 had jurisdiction in an area that after the 1st day of January, 1969, forms part of two or more school divisions, each divisional board shall, on or before the 15th day of March, 1969, designate two of the



Subsection 2. The amendment provides that the reserve for working funds and the balance in a reserve accumulated from transfers from revenue funds shall be dealt with in the same manner as the audited surplus or deficit.

Subsection 3. The amendment is to exclude lands and premises used as schools from the assets to be valued and adjusted by the arbitrators.

Subsection 4. The amendment is to exclude lands and premises used as schools from the assets to be valued and adjusted by the arbitrators.

Subsection 5. The amendment will permit a divisional board to pay to an arbitrator a fee other than the fee prescribed in section 99 of *The Schools Administration Act*.

SECTION 3. Provision is made for the apportionment of costs for 1969 in respect of territory without municipal organization that is included in a school division.

arbitrators appointed by it under subsection 3 who shall collectively value and adjust in an equitable manner the assets and liabilities of such board as of the 31st day of December, 1968, except lands and premises used as schools on such 31st day of December, and shall apportion in an equitable manner the obligations under clauses *c* and *f* of subsection 2.

(5) The said section 84 is amended by adding thereto the following subsection: R.S.O. 1960, c. 362, s. 84 (1968, c. 122, s. 8), amended

(10) Notwithstanding subsection 3 of section 99 of *The Schools Administration Act*, each arbitrator appointed under this section shall be paid such fee for his services as is determined by the divisional board that appointed him. Fees for arbitrators R.S.O. 1960, c. 361

3. Part VI of *The Secondary Schools and Boards of Education Act*, as enacted by section 8 of *The Secondary Schools and Boards of Education Amendment Act, 1968*, is amended by adding thereto the following section: R.S.O. 1960, c. 362, Pt. VI (1968, c. 122, s. 8), amended

86a.—(1) Where any part of territory without municipal organization that in the year 1968 is not in a school section or a high school district is included in a school division and deemed a district municipality, for the purposes of apportionment for the year 1969 under section 86 the equalized assessment of the property rateable, Equalized assessment in 1968 in territory: not in school section or high school district

(a) for public school purposes in the district municipality shall be the assessment upon which rates are levied in the year 1968 under *The Provincial Land Tax Act, 1961-62* on all property rateable for public school purposes in the district municipality; and 1961-62, c. 111

(b) for secondary school purposes in the district municipality shall be the assessment upon which rates are levied in the year 1968 under *The Provincial Land Tax Act, 1961-62* on all rateable property in the district municipality.

(2) Where any part of territory without municipal organization that in the year 1968 is in a school section is included in a school division and deemed a district municipality for the purposes of apportionment for the year 1969 under section 86 the equalized assessment of the property rateable, in school section

(a) for public school purposes in the district municipality shall be the assessment upon which rates are levied in the year 1968 by the board of the school section, as adjusted by the application of the equalization factor based on such assessment and provided by the Department of Municipal Affairs; and

(b) for secondary school purposes in the district municipality shall be the sum of the equalized assessment under clause a and the assessment of the property in the district municipality upon which rates are levied in the year 1968 by the separate school board of a separate school zone all or part of which is within the district municipality, as adjusted by the application of the equalization factor based on such assessment and provided by the Department of Municipal Affairs.

in high  
school  
district but  
not in  
school  
section

(3) Where any part of territory without municipal organization that in the year 1968 is in a high school district but not in a school section is included in a school division and deemed a district municipality for the purposes of apportionment for the year 1969 under section 86 the equalized assessment of the property rateable,

(a) for public school purposes in the district municipality shall be the assessment upon which rates are levied in the year 1968 by the board of the high school district on property rateable for public school purposes in the district municipality, as adjusted by the application of the equalization factor based on such assessment and provided by the Department of Municipal Affairs; and

(b) for secondary school purposes in the district municipality shall be the assessment upon which rates are levied in the year 1968 by the board of the high school district on all the rateable property in the district municipality, as adjusted by the application of the equalization factor based on such assessment and provided by the Department of Municipal Affairs.

R.S.O. 1960,  
c. 362, s. 87,  
(1968, c. 122,  
s. 8),  
amended

4. Section 87 of *The Secondary Schools and Boards of Education Act*, as enacted by section 8 of *The Secondary*

SECTION 4. The portions of territory without municipal organization which are not now in a school section but will be included in a school division were not subject to taxation for public school purposes in 1968. For this reason, it is necessary to exclude them from the provisions for an adjusted rate provided in subsections 1, 2 and 3.

SECTION 5. Provision is made for levying rates in 1969 on properties in territory without municipal organization that were included in a school division.



*Schools and Boards of Education Amendment Act, 1968*, is amended by adding thereto the following subsections:

- (1a) Where in a municipality the basis upon which the values of lands were ascertained in taking the assessment upon which taxes are levied in the year 1969 was different from that used in taking the assessment upon which taxes were levied in the year 1968, the adjusted rate, for the purpose of subsection 2 in such municipality, shall be adjusted by multiplying it by the ratio of the equalization factor provided by the Department of Municipal Affairs, based on the assessment on which taxes were levied in the year 1968, to the equalization factor provided by the Department of Municipal Affairs, based on the assessment on which taxes are levied in the year 1969. <sup>Where reassessment in 1968</sup>

- (6) Subsections 1, 2 and 3 do not apply to a part of territory without municipal organization that is deemed to be a district municipality under clause *b* or *c* of subsection 3 of section 81. <sup>Application to territory without municipal organization</sup>

5. Section 88 of *The Secondary Schools and Boards of Education Act*, as enacted by section 8 of *The Secondary Schools and Boards of Education Amendment Act, 1968*, is amended by adding thereto the following subsections: <sup>R.S.O. 1960, c. 362, s. 88 (1968, c. 122, s. 8),</sup>

- (1a) The assessment of all property rateable for public school purposes in territory without municipal organization that is deemed a district municipality upon which rates shall be levied in the year 1969 to raise the sum determined under section 86 for public school purposes shall be, <sup>Assessments upon which rates to be levied in 1969 in territory: for public school purposes</sup>
- (a) where the property in the year 1968 is not situate in a school section or a high school district, the assessment upon which rates are levied in the year 1969 under *The Provincial Land Tax Act, 1961-62*; or <sup>1961-62, c. 111</sup>
- (b) where the property in the year 1968 is situate in a school section, the assessment on which taxes for public school purposes in the year 1969 would have been levied by the board of such school section if such board had not been dissolved on the 1st day of January, 1969; or



- (c) where the property in the year 1968 is situate in a high school district but not in a school section, the assessment on which taxes for secondary school purposes in the year 1969 would have been levied by the board of such high school district if such board had not been dissolved on the 1st day of January, 1969.

for secondary school purposes

- (1b) The assessment of property rateable for secondary school purposes in territory without municipal organization that is deemed a district municipality upon which rates shall be levied in the year 1969 to raise the sum determined under section 86 for secondary school purposes,

- (a) in respect of property rateable for public school purposes under subsection 1a, shall be the assessments determined under subsection 1a; and

- (b) in respect of property rateable for separate school purposes shall be,

1961-62,  
c. 111

- (i) where the property in the year 1968 is not situate in a school section or a high school district, the assessment upon which rates are levied in the year 1969 under *The Provincial Land Tax Act, 1961-62*, or

- (ii) where the property in the year 1968 is situate in a school section, the assessment on which the taxes for separate school purposes in the year 1969 are levied by the board of the separate school zone or would have been levied by such board if the board had not been dissolved on the 1st day of January, 1969, or

- (iii) where the property in the year 1968 is situate in a high school district but not in a school section, the assessment on which taxes for secondary school purposes in the year 1969 would have been levied by the board of the high school district if such board had not been dissolved on the 1st day of January, 1969.



SECTION 6. The amendment is to make it clear that the provisions giving the right to certain pupils to attend school in another school division do not have the effect of extending the right acquired by a pupil to attend a school under an order of the Ontario Municipal Board or an agreement between boards or a board and the Federal Government.

SECTION 7. The section is amended to correct the reference to refer to section 100*a* rather than subsection 2 of section 100*a*.

6. Section 97 of *The Secondary Schools and Boards of Education Act*, as enacted by section 8 of *The Secondary Schools and Boards of Education Amendment Act, 1968*, is amended by adding thereto the following subsection:

- (3) Subsections 1 and 2 do not extend the right acquired by a pupil to attend a school under an order of the Ontario Municipal Board or under an agreement between two or more boards or between a board and the Crown in right of Canada. Application of subss. 1, 2

7.—(1) Subsection 1 of section 110 of *The Secondary Schools and Boards of Education Act*, as enacted by section 9 of *The Secondary Schools and Boards of Education Amendment Act, 1968*, is amended by striking out "subsection 2 of" in the eighth and ninth lines. R.S.O. 1960, c. 362, s. 110 (1968, c. 122, s. 9), subs. 1, amended

(2) Subsection 2 of the said section 110 is amended by striking out "subsection 2 of" in the ninth line. R.S.O. 1960, c. 362, s. 110 (1968, c. 122, s. 9), subs. 2, amended

(3) Subsection 3 of the said section 110 is amended by inserting after "but" in the second line "his parent or guardian" and by striking out "subsection 2 of" in the eleventh line, so that the subsection shall read as follows: R.S.O. 1960, c. 362, s. 110 (1968, c. 122, s. 9), subs. 3, amended

- (3) Where a child is admitted to a school for trainable retarded children but his parent or guardian is resident on lands that are exempt from taxation for school purposes and that have been designated by the Minister as a rural school section for which a board has been appointed under subsection 1 of section 12 of *The Public Schools Act* or that have been designated a high school district for which a board has been appointed under subsection 5 of section 12, the board shall pay to the divisional board a tuition fee in accordance with section 100a of *The Schools Administration Act*. Admission of child resident on tax-exempt lands  
R.S.O. 1960 cc. 330, 361

8.—(1) This Act, except subsection 1 of section 1 and section 7, shall be deemed to have come into force on the 23rd day of July, 1968. Commencement

(2) Subsection 1 of section 1 and section 7 shall be deemed to have come into force on the 1st day of January, 1969. Idem

9. This Act may be cited as *The Secondary Schools and Boards of Education Amendment Act, 1968-69*. Short title

An Act to amend The Secondary Schools  
and Boards of Education Act

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*1st Reading*

December 19th, 1968

*2nd Reading*

November 20th, 1969

*3rd Reading*

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MR. DAVIS

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(Reprinted as amended by the Education and  
University Affairs Committee)

CA20N  
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BILL 46

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

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**An Act to amend  
The Secondary Schools and Boards of Education Act**

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MR. DAVIS

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BILL 46

1968-69

## An Act to amend The Secondary Schools and Boards of Education Act

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.**—(1) Section 81 of *The Secondary Schools and Boards of Education Act*, as enacted by section 8 of *The Secondary Schools and Boards of Education Amendment Act, 1968*, is amended by adding thereto the following subsection:

(1a) This Part does not apply to a board, school section or high school district heretofore or hereafter established under section 12 of *The Public Schools Act* or under subsection 5 of section 12 or subsection 4a of section 51 of this Act.

(2) Subsection 3 of the said section 81 is amended by striking out “and” at the end of clause *a*, by adding “and” at the end of clause *b* and by adding thereto the following clause:

(c) any part of territory without municipal organization that is designated by the regulation made under subsection 2 of section 82 as part of a school division and on the 31st day of December, 1968, was not in a school section or in a high school district,

. . . . .

**2.**—(1) Clause *b* of subsection 2 of section 84 of *The Secondary Schools and Boards of Education Act*, as enacted by section 8 of *The Secondary Schools and Boards of Education Amendment Act, 1968*, is amended by striking out “3” in the first line and inserting in lieu thereof “4”, so that the clause shall read as follows:

- (b) subject to subsection 4, all real and personal property vested in such boards and situate in the school division becomes vested in the divisional board.

R.S.O. 1960,  
c. 362, s. 84  
(1968, c. 122,  
s. 8),  
subs. 2,  
cl. d,  
amended

- (2) Clause *d* of subsection 2 of the said section 84 is amended by adding at the commencement thereof "the reserve for working funds, the balance in a reserve or a reserve fund accumulated from transfers from revenue funds and", so that the clause shall read as follows:

- (d) the reserve for working funds, the balance in a reserve or a reserve fund accumulated from transfers from revenue funds and the audited surplus or deficit as at the 31st day of December, 1968, of each such board shall accrue to the credit of, or become the responsibility of, the assessment supporting such board on the 31st day of December, 1968, and shall be apportioned by the arbitrators under this section among the municipalities or parts thereof comprising the area of jurisdiction of such board in the same proportion as the requisition for the year 1968 was apportioned among such municipalities or parts.

R.S.O. 1960,  
c. 362, s. 84  
(1968, c. 122,  
s. 8), subs. 3,  
amended

- (3) Subsection 3 of the said section 84 is amended by inserting after "1968" in the seventh line "except lands and premises used as schools on such 31st day of December", so that the subsection shall read as follows:

#### Arbitration

- (3) Each divisional board shall, on or before the 15th day of March, 1969, appoint three or five arbitrators, who are not members of the divisional board or of a municipal council that has jurisdiction in the school division, who shall value and adjust in an equitable manner the assets and liabilities, as of the 31st day of December, 1968, except lands and premises used as schools on such 31st day of December, of the boards that, before they were dissolved under subsection 2, had jurisdiction wholly in the school division in which the divisional board has jurisdiction.

R.S.O. 1960,  
c. 362, s. 84  
(1968, c. 122,  
s. 8), subs. 4,  
amended

- (4) Subsection 4 of the said section 84 is amended by inserting after "1968" in the ninth line "except lands and premises used as schools on such 31st day of December", so that the subsection shall read as follows:

#### Idem

- (4) Where a board that is dissolved under subsection 2 had jurisdiction in an area that after the 1st day of January, 1969, forms part of two or more school divisions, each divisional board shall, on or before the 15th day of March, 1969, designate two of the

arbitrators appointed by it under subsection 3 who shall collectively value and adjust in an equitable manner the assets and liabilities of such board as of the 31st day of December, 1968, except lands and premises used as schools on such 31st day of December, and shall apportion in an equitable manner the obligations under clauses *c* and *f* of subsection 2.

(5) The said section 84 is amended by adding thereto the following subsection:

R.S.O. 1960,  
c. 362, s. 84  
(1968, c. 122,  
s. 8),  
amended

(10) Notwithstanding subsection 3 of section 99 of *The Schools Administration Act*, each arbitrator appointed under this section shall be paid such fee for his services as is determined by the divisional board that appointed him.

Fees for  
arbitrators  
R.S.O. 1960,  
c. 361

**3.** Part VI of *The Secondary Schools and Boards of Education Act*, as enacted by section 8 of *The Secondary Schools and Boards of Education Amendment Act, 1968*, is amended by adding thereto the following section:

R.S.O. 1960,  
c. 362, Pt. VI  
(1968, c. 122,  
s. 8),  
amended

86a.—(1) Where any part of territory without municipal organization that in the year 1968 is not in a school section or a high school district is included in a school division and deemed a district municipality, for the purposes of apportionment for the year 1969 under section 86 the equalized assessment of the property rateable,

Equalized  
assessment  
in 1968 in  
territory;  
not in school  
section or  
high school  
district

(a) for public school purposes in the district municipality shall be the assessment upon which rates are levied in the year 1968 under *The Provincial Land Tax Act, 1961-62* on all property rateable for public school purposes in the district municipality; and

1961-62,  
c. 111

(b) for secondary school purposes in the district municipality shall be the assessment upon which rates are levied in the year 1968 under *The Provincial Land Tax Act, 1961-62* on all rateable property in the district municipality.

(2) Where any part of territory without municipal organization that in the year 1968 is in a school section is included in a school division and deemed a district municipality for the purposes of apportionment for the year 1969 under section 86 the equalized assessment of the property rateable,

in school  
section

- (a) for public school purposes in the district municipality shall be the assessment upon which rates are levied in the year 1968 by the board of the school section, as adjusted by the application of the equalization factor based on such assessment and provided by the Department of Municipal Affairs; and
- (b) for secondary school purposes in the district municipality shall be the sum of the equalized assessment under clause *a* and the assessment of the property in the district municipality upon which rates are levied in the year 1968 by the separate school board of a separate school zone all or part of which is within the district municipality, as adjusted by the application of the equalization factor based on such assessment and provided by the Department of Municipal Affairs.

in high  
school  
district but  
not in  
school  
section

- (3) Where any part of territory without municipal organization that in the year 1968 is in a high school district but not in a school section is included in a school division and deemed a district municipality for the purposes of apportionment for the year 1969 under section 86 the equalized assessment of the property rateable,

- (a) for public school purposes in the district municipality shall be the assessment upon which rates are levied in the year 1968 by the board of the high school district on property rateable for public school purposes in the district municipality, as adjusted by the application of the equalization factor based on such assessment and provided by the Department of Municipal Affairs; and
- (b) for secondary school purposes in the district municipality shall be the assessment upon which rates are levied in the year 1968 by the board of the high school district on all the rateable property in the district municipality, as adjusted by the application of the equalization factor based on such assessment and provided by the Department of Municipal Affairs.

R.S.O. 1960,  
c. 362, s. 87  
(1968, c. 122,  
s. 8)  
amended

**4.** Section 87 of *The Secondary Schools and Boards of Education Act*, as enacted by section 8 of *The Secondary*



*Schools and Boards of Education Amendment Act, 1968*, is amended by adding thereto the following subsections:

- (1a) Where in a municipality the basis upon which the <sup>Where reassessment in 1968</sup> values of lands were ascertained in taking the assessment upon which taxes are levied in the year 1969 was different from that used in taking the assessment upon which taxes were levied in the year 1968, the adjusted rate, for the purpose of subsection 2 in such municipality, shall be adjusted by multiplying it by the ratio of the equalization factor provided by the Department of Municipal Affairs, based on the assessment on which taxes were levied in the year 1968, to the equalization factor provided by the Department of Municipal Affairs, based on the assessment on which taxes are levied in the year 1969.

- (6) Subsections 1, 2 and 3 do not apply to a part of <sup>Application to territory without municipal organization</sup> territory without municipal organization that is deemed to be a district municipality under clause *b* or *c* of subsection 3 of section 81.

**5.** Section 88 of *The Secondary Schools and Boards of Education Act*, as enacted by section 8 of *The Secondary Schools and Boards of Education Amendment Act, 1968*, is <sup>R.S.O. 1960, c. 362, s. 88 (1968, c. 122, s. 8),</sup> amended by adding thereto the following subsections:

- (1a) The assessment of all property rateable for public <sup>Assessments upon which rates to be levied in 1969 in territory for public school purposes</sup> school purposes in territory without municipal organization that is deemed a district municipality upon which rates shall be levied in the year 1969 to raise the sum determined under section 86 for public school purposes shall be,

- (a) where the property in the year 1968 is not situate in a school section or a high school district, the assessment upon which rates are levied in the year 1969 under *The Provincial Land Tax Act, 1961-62*; or <sup>1961-62, c. 111</sup>

- (b) where the property in the year 1968 is situate in a school section, the assessment on which taxes for public school purposes in the year 1969 would have been levied by the board of such school section if such board had not been dissolved on the 1st day of January, 1969; or

- (c) where the property in the year 1968 is situate in a high school district but not in a school section, the assessment on which taxes for secondary school purposes in the year 1969 would have been levied by the board of such high school district if such board had not been dissolved on the 1st day of January, 1969.

for secon-  
dary school  
purposes

- (1b) The assessment of property rateable for secondary school purposes in territory without municipal organization that is deemed a district municipality upon which rates shall be levied in the year 1969 to raise the sum determined under section 86 for secondary school purposes,

- (a) in respect of property rateable for public school purposes under subsection 1a, shall be the assessments determined under subsection 1a; and

- (b) in respect of property rateable for separate school purposes shall be,

- (i) where the property in the year 1968 is not situate in a school section or a high school district, the assessment upon which rates are levied in the year 1969 under *The Provincial Land Tax Act, 1961-62*, or

1961-62,  
c. 111

- (ii) where the property in the year 1968 is situate in a school section, the assessment on which the taxes for separate school purposes in the year 1969 are levied by the board of the separate school zone or would have been levied by such board if the board had not been dissolved on the 1st day of January, 1969, or

- (iii) where the property in the year 1968 is situate in a high school district but not in a school section, the assessment on which taxes for secondary school purposes in the year 1969 would have been levied by the board of the high school district if such board had not been dissolved on the 1st day of January, 1969.

**6.** Section 97 of *The Secondary Schools and Boards of Education Act*, as enacted by section 8 of *The Secondary Schools and Boards of Education Amendment Act, 1968*, is amended by adding thereto the following subsection:

- (3) Subsections 1 and 2 do not extend the right acquired by a pupil to attend a school under an order of the Ontario Municipal Board or under an agreement between two or more boards or between a board and the Crown in right of Canada.

**7.**—(1) Subsection 1 of section 110 of *The Secondary Schools and Boards of Education Act*, as enacted by section 9 of *The Secondary Schools and Boards of Education Amendment Act, 1968*, is amended by striking out “subsection 2 of” in the eighth and ninth lines.

(2) Subsection 2 of the said section 110 is amended by striking out “subsection 2 of” in the ninth line.

(3) Subsection 3 of the said section 110 is amended by inserting after “but” in the second line “his parent or guardian” and by striking out “subsection 2 of” in the eleventh line, so that the subsection shall read as follows:

- (3) Where a child is admitted to a school for trainable retarded children but his parent or guardian is resident on lands that are exempt from taxation for school purposes and that have been designated by the Minister as a rural school section for which a board has been appointed under subsection 1 of section 12 of *The Public Schools Act* or that have been designated a high school district for which a board has been appointed under subsection 5 of section 12, the board shall pay to the divisional board a tuition fee in accordance with section 100a of *The Schools Administration Act*.

**8.**—(1) This Act, except subsection 1 of section 1 and section 7, shall be deemed to have come into force on the 23rd day of July, 1968.

(2) Subsection 1 of section 1 and section 7 shall be deemed to have come into force on the 1st day of January, 1969.

**9.** This Act may be cited as *The Secondary Schools and Boards of Education Amendment Act, 1968-69*.







An Act to amend The Secondary Schools  
and Boards of Education Act

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*1st Reading* **Government**

December 19th, 1968 **Publications**

*2nd Reading*

November 20th, 1969

*3rd Reading*

December 2nd, 1969

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Mr. DAVIS

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**BILL 47**

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

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**An Act to amend The Separate Schools Act**

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MR. DAVIS

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#### EXPLANATORY NOTES

SECTION 1. The amendment is necessary to form a district municipality of those portions of territory without municipal organization that now form part of a combined separate school zone that will become part of a district combined separate school zone.

SECTION 2. The amendment corrects a reference.

SECTION 3—Subsection 1. The amendment corrects a reference.

## BILL 47

1968-69

## An Act to amend The Separate Schools Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 3 of section 74 of *The Separate Schools Act*, R.S.O. 1960, c. 368, s. 74, as enacted by section 6 of *The Separate Schools Amendment Act, 1968*, is amended by inserting after "Part" in the fourth line "and any part of territory without municipal organization that is part of a combined separate school zone whose centres are in an area designated by the regulations made under this Part", so that the subsection shall read as follows:

- (3) For the purposes of this Part, every separate school zone that comprises only territory without municipal organization and whose centre is in an area designated by the regulations made under this Part and any part of territory without municipal organization that is part of a combined separate school zone whose centres are in an area designated by the regulations made under this Part shall be deemed to be a district municipality.

2. Subsection 4 of section 76 of *The Separate Schools Act*, R.S.O. 1960, c. 368, s. 76, as enacted by section 6 of *The Separate Schools Amendment Act, 1968*, is amended by striking out "1" in the fourth line and inserting in lieu thereof "3".

3.—(1) Clause *b* of subsection 1 of section 80 of *The Separate Schools Act*, as enacted by section 6 of *The Separate Schools Amendment Act, 1968*, is amended by striking out "2" in the first line and inserting in lieu thereof "3", so that the clause shall read as follows:

- (b) subject to subsection 3, all property vested in such boards and situate in the county or district combined separate school zone becomes vested in the county or district combined separate school board.

R.S.O. 1960,  
c. 368, s. 80  
(1968, c. 125,  
s. 6), subs. 1,  
cl. d,  
amended

(2) Clause *d* of subsection 1 of the said section 80 is amended by adding at the commencement thereof "the reserve for working funds, the balance in a reserve or a reserve fund accumulated from transfers from revenue funds and", so that the clause shall read as follows:

- (*d*) the reserve for working funds, the balance in a reserve or a reserve fund accumulated from transfers from revenue funds and the audited surplus or deficit as at the 31st day of December, 1968, of each such board shall accrue to the credit of, or become the responsibility of, the assessment supporting such board on the 31st day of December, 1968, and shall be apportioned by the arbitrators under this section among the municipalities or parts thereof comprising the area of jurisdiction of such board in the same proportion as the requisition for the year 1968 was apportioned among such municipalities or parts.

R.S.O. 1960,  
c. 368, s. 80  
(1968, c. 125,  
s. 6), subs. 2,  
amended

(3) Subsection 2 of the said section 80 is amended by inserting after "1968" in the eighth line "except lands and premises used as schools on such 31st day of December", so that the subsection shall read as follows:

#### Arbitration

- (2) Each county or district combined separate school board shall, on or before the 15th day of March, 1969, appoint three arbitrators who are not trustees of the board or members of a municipal council that has jurisdiction within the county or district combined separate school zone, who shall value and adjust in an equitable manner the assets and liabilities, as of the 31st day of December, 1968, except lands and premises used as schools on such 31st day of December, of the boards that, before they were dissolved under subsection 1, had jurisdiction wholly in the area in which the county or district combined separate school board has jurisdiction.

R.S.O. 1960,  
c. 368, s. 80  
(1968, c. 125,  
s. 6), subs. 3,  
amended

(4) Subsection 3 of the said section 80 is amended by inserting after "manner" in the ninth line "the assets and liabilities of such boards as of the 31st day of December, 1968, except lands and premises used as schools on such 31st day of December, and shall apportion in an equitable manner", so that the subsection shall read as follows:

#### Idem

- (3) Where a board that is dissolved under subsection 1 had jurisdiction in an area that, after the 1st day of January, 1969, forms part of two or more county or district combined separate school zones, each such county or district combined separate school board



Subsection 2. The amendment provides that the reserve for working funds and the balance in a reserve accumulated from transfers from revenue funds shall be dealt with in the same manner as the audited surplus or deficit.

Subsection 3. The amendment is to exclude lands and premises used as schools from the assets to be valued and adjusted by the arbitrators.

Subsection 4. Provision is made for arbitrators to value and adjust assets and liabilities other than lands and premises used as schools.

Subsection 5. The amendment will permit a county or district combined separate school board to pay to an arbitrator a fee other than the fee prescribed in section 99 of *The Schools Administration Act*.

SECTION 4. The amendment is to make it clear that the provisions giving the right to certain pupils to attend school in another combined separate school zone do not have the effect of extending the right acquired by a pupil to attend a school under an order of the Ontario Municipal Board or an agreement between boards or a board and the Federal Government.

shall, on or before the 15th day of March, 1969, designate two of the arbitrators appointed under subsection 2 who shall collectively value and adjust in an equitable manner the assets and liabilities of such boards as of the 31st day of December, 1968, except lands and premises used as schools on such 31st day of December, and shall apportion in an equitable manner the obligations under clauses *c* and *f* of subsection 1.

(5) The said section 80 is amended by adding thereto the following subsection: R.S.O. 1960, c. 368, s. 80 (1968, c. 125, s. 6), amended

(9) Notwithstanding subsection 3 of section 99 of *The Schools Administration Act*, each arbitrator appointed under this section shall be paid such fee for his services as is determined by the board that appointed him. Fees for arbitrators R.S.O. 1960, c. 361

4. Section 86 of *The Separate Schools Act*, as enacted by section 6 of *The Separate Schools Amendment Act, 1968*, is amended by adding thereto the following subsection: R.S.O. 1960, c. 368, s. 86 (1968, c. 125, s. 6), amended

(3) Subsections 1 and 2 do not extend the right acquired by a pupil to attend a school under an order of the Ontario Municipal Board or under an agreement between two or more boards or between a board and the Crown in right of Canada. Application of subss. 1, 2

5. This Act shall be deemed to have come into force on the 23rd day of July, 1968. Commencement

6. This Act may be cited as *The Separate Schools Amendment Act, 1968-69*. Short title

An Act to amend The Separate Schools Act

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*1st Reading*

December 19th, 1968

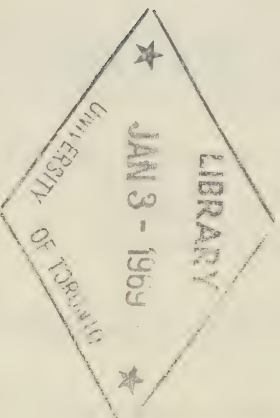
*2nd Reading*

*3rd Reading*

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MR. DAVIS

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## BILL 47

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2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

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**An Act to amend The Separate Schools Act**

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MR. DAVIS

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TORONTO

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BILL 47

1968-69

## An Act to amend The Separate Schools Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 3 of section 74 of *The Separate Schools Act*, R.S.O. 1960, c. 368, s. 74, as enacted by section 6 of *The Separate Schools Amendment Act, 1968*, (1968, c. 125, s. 6), subs. 3, is amended by inserting after "Part" in the fourth line "and any part of territory without municipal organization that is part of a combined separate school zone whose centres are in an area designated by the regulations made under this Part", so that the subsection shall read as follows:

- (3) For the purposes of this Part, every separate school zone that comprises only territory without municipal organization and whose centre is in an area designated by the regulations made under this Part and any part of territory without municipal organization that is part of a combined separate school zone whose centres are in an area designated by the regulations made under this Part shall be deemed to be a district municipality.

2. Subsection 4 of section 76 of *The Separate Schools Act*, R.S.O. 1960, c. 368, s. 76, as enacted by section 6 of *The Separate Schools Amendment Act, 1968*, (1968, c. 125, s. 6), subs. 4, is amended by striking out "1" in the fourth line and inserting in lieu thereof "3".

3.—(1) Clause *b* of subsection 1 of section 80 of *The Separate Schools Act*, R.S.O. 1960, c. 368, s. 80, as enacted by section 6 of *The Separate Schools Amendment Act, 1968*, (1968, c. 125, s. 6), subs. 1, is amended by striking out "2" in the first line and inserting in lieu thereof "3", so that the clause shall read as follows:

- (b) subject to subsection 3, all property vested in such boards and situate in the county or district combined separate school zone becomes vested in the county or district combined separate school board.



R.S.O. 1960,  
c. 368, s. 80  
(1968, c. 125,  
s. 6), subs. 1,  
cl. *d*,  
amended

(2) Clause *d* of subsection 1 of the said section 80 is amended by adding at the commencement thereof "the reserve for working funds, the balance in a reserve or a reserve fund accumulated from transfers from revenue funds and", so that the clause shall read as follows:

(*d*) the reserve for working funds, the balance in a reserve or a reserve fund accumulated from transfers from revenue funds and the audited surplus or deficit as at the 31st day of December, 1968, of each such board shall accrue to the credit of, or become the responsibility of, the assessment supporting such board on the 31st day of December, 1968, and shall be apportioned by the arbitrators under this section among the municipalities or parts thereof comprising the area of jurisdiction of such board in the same proportion as the requisition for the year 1968 was apportioned among such municipalities or parts.

R.S.O. 1960,  
c. 368, s. 80  
(1968, c. 125,  
s. 6), subs. 2,  
amended

(3) Subsection 2 of the said section 80 is amended by inserting after "1968" in the eighth line "except lands and premises used as schools on such 31st day of December", so that the subsection shall read as follows:

#### Arbitration

(2) Each county or district combined separate school board shall, on or before the 15th day of March, 1969, appoint three arbitrators who are not trustees of the board or members of a municipal council that has jurisdiction within the county or district combined separate school zone, who shall value and adjust in an equitable manner the assets and liabilities, as of the 31st day of December, 1968, except lands and premises used as schools on such 31st day of December, of the boards that, before they were dissolved under subsection 1, had jurisdiction wholly in the area in which the county or district combined separate school board has jurisdiction.

R.S.O. 1960,  
c. 368, s. 80  
(1968, c. 125,  
s. 6), subs. 3,  
amended

(4) Subsection 3 of the said section 80 is amended by inserting after "manner" in the ninth line "the assets and liabilities of such boards as of the 31st day of December, 1968, except lands and premises used as schools on such 31st day of December, and shall apportion in an equitable manner", so that the subsection shall read as follows:

#### Idem

(3) Where a board that is dissolved under subsection 1 had jurisdiction in an area that, after the 1st day of January, 1969, forms part of two or more county or district combined separate school zones, each such county or district combined separate school board

shall, on or before the 15th day of March, 1969, designate two of the arbitrators appointed under subsection 2 who shall collectively value and adjust in an equitable manner the assets and liabilities of such boards as of the 31st day of December, 1968, except lands and premises used as schools on such 31st day of December, and shall apportion in an equitable manner the obligations under clauses *c* and *f* of subsection 1.

(5) The said section 80 is amended by adding thereto the following subsection:

R.S.O. 1960,  
c. 368, s. 80  
(1968, c. 125,  
s. 6),  
amended

(9) Notwithstanding subsection 3 of section 99 of *The Schools Administration Act*, each arbitrator appointed under this section shall be paid such fee for his services as is determined by the board that appointed him.

Fees for  
arbitrators  
R.S.O. 1960,  
c. 361

4. Section 86 of *The Separate Schools Act*, as enacted by section 6 of *The Separate Schools Amendment Act, 1968*, is amended by adding thereto the following subsection:

R.S.O. 1960,  
c. 368, s. 86  
(1968, c. 125,  
s. 6),  
amended

(3) Subsections 1 and 2 do not extend the right acquired by a pupil to attend a school under an order of the Ontario Municipal Board or under an agreement between two or more boards or between a board and the Crown in right of Canada.

Application  
of subss. 1, 2

5. This Act shall be deemed to have come into force on the 23rd day of July, 1968.

Commence-  
ment

6. This Act may be cited as *The Separate Schools Amendment Act, 1968-69*.

Short title





An Act to amend The Separate Schools Act

Government  
Public Affairs

*1st Reading*

December 19th, 1968

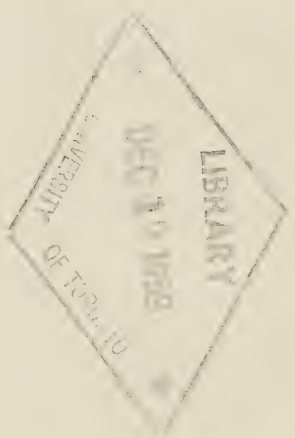
*2nd Reading*

December 2nd, 1969

*3rd Reading*

December 8th, 1969

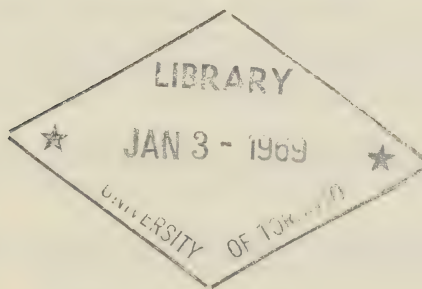
MR. DAVIS



2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

The Professional Engineers Act, 1968-69

MR. WISHART



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## EXPLANATORY NOTES

GENERAL—At the 1968 Session of the Legislature, Bill 42 was introduced which represented the first comprehensive revision of *The Professional Engineers Act* which was first passed in 1922. Bill 42 was not proceeded with in view of the publication at that time of the Report of the Royal Commission Inquiry into Civil Rights.

The changes made in this revision are designed to facilitate the Association of Professional Engineers of the Province of Ontario in the administration of its affairs and to bring the Act up to date in substance and form.

Most of the differences between this Bill and Bill 42 are changes to conform to the recommendations of the McRuer Report.



BILL 48

1968-69

## The Professional Engineers Act, 1968-69

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

### INTERPRETATION

**1.** In this Act,

Interpre-  
tation

- (a) "Association" means the Association of Professional Engineers of the Province of Ontario;
- (b) "by-law" means a by-law of the Association;
- (c) "chapter" means a group of members constituted and governed by by-law;
- (d) "council" means the council of the Association;
- (e) "graduate" means a graduate of a university in a course in any branch of engineering or science, the practice of which constitutes professional engineering and which is recognized by the council;
- (f) "licence" means a licence to practise professional engineering issued under this Act;
- (g) "licensee" means a person who holds a subsisting licence;
- (h) "member" means a member of the Association;
- (i) "practice of professional engineering" means the doing of one or more acts of advising on, reporting on, designing of or supervising of the construction of, all public utilities, industrial works, railways, tramways, bridges, tunnels, highways, roads, canals, harbour works, lighthouses, river improvements, wet docks, dry docks, floating docks, dredges,

cranes, drainage works, irrigation works, water-works, water purification plants, sewerage works, sewage disposal works, incinerators, hydraulic works, power transmission systems, steel, concrete or reinforced concrete structures, electric lighting systems, electric power plants, electric machinery, electric or electronic apparatus, electrical or electronic communication systems or equipment, mineral property, mining machinery, mining development, mining operations, gas or oil developments, smelters, refineries, metallurgical machinery, or equipment or apparatus for carrying out such operations, machinery, boilers or their auxiliaries, steam engines, hydraulic turbines, pumps, internal combustion engines or other mechanical structures, chemical or metallurgical machinery, apparatus or processes, or aircraft, and generally all other engineering works including the engineering works and installations relating to airports, airfields or landing strips or relating to town and community planning;

- (j) "professional engineer" means a person who is a member or licensee;
- (k) "region" means a geographical area of Ontario as defined by by-law;
- (l) "register" means the record of registrants maintained by the registrar;
- (m) "registrant" means a person recorded in the register as a member, licensee, an assistant to a professional engineer, a graduate or an undergraduate;
- (n) "registrar" means the registrar of the Association;
- (o) "regulation" means a regulation of the Association;
- (p) "undergraduate" means a student enrolled at but not graduated from a university in a course in any branch of engineering or science, the practice of which constitutes professional engineering and that is recognized by the council. R.S.O. 1960, c. 309, s. 1, *amended*.

Activities  
not affected

## 2. Nothing in this Act prevents,

- (a) any person from performing his duties in the Canadian Armed Forces;



SECTION 2—Clause *e*. The exemption relating to mining work is revised. Provision is made in section 11 (6) for admission to membership in the Association of persons who are engaged in this field.

- (b) any member or licensee of the Ontario Association of Architects under *The Architects Act* or any employee of such member or licensee acting under the direction and responsibility of such member or licensee from performing professional engineering services in the course of any work undertaken or proposed to be undertaken by such member or licensee as an architect; R.S.O. 1960,  
c. 20
- (c) any person who holds a certificate of qualification under *The Operating Engineers Act* from practising or designating himself as an operating engineer; R.S.O. 1960,  
c. 282
- (d) any person from practising as a bacteriologist, chemist, geologist, mineralogist or physicist;
- (e) any person from advising on or reporting on any mineral property or prospect;
- (f) any person from operating, executing or supervising any works as owner, contractor, superintendent, foreman, inspector or master,

or requires any such person to become registered or licensed under this Act in order to do any such thing. R.S.O. 1960, c. 309, s. 2, *amended*.

#### THE ASSOCIATION

**3.**—(1) The body politic and corporate known as the "Association of Professional Engineers of the Province of Ontario" incorporated under *The Professional Engineers Act*, 1922, c. 59 is hereby continued. Association  
continued

(2) All persons who are members of the Association when this Act comes into force or who hereafter are admitted as members constitute the Association. R.S.O. 1960, c. 309, s. 3 (1), *amended*. Members

(3) The objects of the Association are, Objects

- (a) to regulate the practice of professional engineering and to govern the profession in accordance with this Act, the regulations and the by-laws;
- (b) to establish and maintain standards of knowledge and skill among its members; and

(c) to establish and maintain standards of professional ethics among its members,

in order that the public interest may be served and protected.  
*New.*

Head office      (4) The head office of the Association shall be at the city of Toronto.

Property      (5) The Association may purchase, acquire or take by gift, devise or bequest for the purposes of the Association and the furtherance of its objects, but for no other purposes or objects, any real or personal property, and may sell, mortgage, lease or otherwise dispose of any such property. R.S.O. 1960, c. 309, s. 3 (4, 5).

#### THE COUNCIL

Council      4.—(1) There shall be a council which shall consist of a president, a first vice-president, a second vice-president, an immediate past president, two elected councillors-at-large, ten elected regional councillors and five appointed councillors, all of whom shall be members and residents of Ontario.

President and vice-presidents      (2) The president and the vice-presidents shall have such qualifications as are prescribed by by-law and shall be elected annually by vote of the members. R.S.O. 1960, c. 309, s. 8 (1-3), *amended*.

Councillors-at-large      (3) One councillor-at-large shall be elected each year for a two-year term by vote of the members. *New.*

Regional councillors      (4) There shall be elected from each of the five regions established and defined by by-law two regional councillors, one to be elected from each region each year for a two-year term by vote of the members who are recorded as residents in that region at the time the election is held.

Appointed councillors      (5) The five appointed councillors shall be appointed by the Lieutenant Governor in Council for a term of three years and shall be qualified respectively in the following fields of engineering:

1. Civil.
2. Mechanical, Aeronautical and Industrial.
3. Electrical.

SECTION 4—Subsection 4. The method of electing ten of the councillors is changed from a branch basis which is the basis in the present Act to a geographical basis.



Subsections 6, 7. These new provisions implement Recommendations 2 and 7 of the McRuer Report (page 1209 of Volume 3).

#### 4. Chemical and Metallurgical.

#### 5. Mining and Geology. R.S.O. 1960, c. 309, s. 8 (5, 6), *amended*.

(6) In addition to the councillors mentioned in subsection 1, the Lieutenant Governor in Council may appoint as coun-<sup>Lay  
councillor;  
legal  
councillor</sup>cillors,

(a) a person who is not a member; and

(b) a person who is a barrister and solicitor of at least ten years standing at the bar of Ontario,

both of whom are residents of Ontario.

(7) Persons appointed under subsection 6 shall serve for <sup>Term</sup>a term of three years but are eligible for re-appointment.

(8) Where the president, a vice-president or a councillor <sup>Vacancies</sup>resigns, is absent from three consecutive meetings of the council, becomes incapacitated or dies, the office may be declared vacant by the council, and, if such office should be declared vacant, except in a case of a councillor appointed by the Lieutenant Governor in Council, the council shall fill the vacancy in such manner as is provided by by-law, and in the case of a vacancy in the office of a councillor appointed by the Lieutenant Governor in Council, the Lieutenant Governor in Council may fill the vacancy by appointment of a person of the same class as the councillor causing the vacancy. R.S.O. 1960, c. 309, s. 8 (6, 7), *amended*.

(9) No person shall be appointed or elected to the council <sup>Councillors  
to be  
Canadians</sup>unless he is a Canadian citizen or other British subject, and no person shall continue to hold any such office if he ceases to be so qualified. *New*.

#### 5. The council,

(a) shall appoint a registrar and a treasurer; and

(b) may appoint a secretary, an executive director and such other officials as the council deems fit,

Registrar,  
treasurer,  
secretary,  
executive  
director

and any two or more of such offices may be held by one person. *New*.

6. No action shall be brought against the council, any member or officer thereof or any person appointed by the council for anything done under this Act, any regulation or any by-law. R.S.O. 1960, c. 309, s. 29, *amended*.

Liability  
of council,  
officers and  
members

**Regulations**

**7.**—(1) The council may make regulations respecting any matter that is outside the scope of the power to enact by-laws specified in section 8 and, without limiting the generality of the foregoing,

- (a) prescribing the scope and conduct of examinations of candidates for registration;
- (b) prescribing the form of the summons referred to in subsection 10 of section 25;
- (c) respecting the practice and procedure for hearings held under this Act;
- (d) defining “professional misconduct” for the purpose of this Act and the regulations;
- (e) defining classes of specialists in the various fields of engineering;
- (f) prescribing the qualifications required of specialists or any class thereof;
- (g) providing for the designation of specialists upon application and examination or otherwise, for the suspension or revocation of such designations, and for the regulation and prohibition of the use of terms, titles or designations by professional engineers indicating specialization in any field of engineering;
- (h) regulating and prohibiting the use of terms, titles or designations by professional engineers in independent practice.

**Approvals**

(2) No regulation is effective,

- (a) until it has been submitted to the members for approval by means of a letter ballot returnable within thirty days after the mailing thereof and it has been approved by a majority of those voting within the prescribed time; and
- (b) until it has been approved by the Lieutenant Governor in Council. *New.*

**By-laws**

**8.**—(1) The council may pass by-laws relating to the administrative and domestic affairs of the Association, and, without limiting the generality of the foregoing,

- (a) respecting the determination and modification of the boundaries of regions and the determination of

SECTIONS 7 and 8. These sections implement Recommendations 25 and 26 of the McRuer Report (page 1211 of Volume 3).



regions in which members shall be deemed to reside for the purposes of the election of councillors;

- (b) prescribing procedures for the nomination and election of the councillors and the nomination and election of the president and the vice-presidents and the qualifications necessary to hold any such office;
- (c) prescribing the duties of the councillors and rules governing their conduct;
- (d) respecting the remuneration and reimbursement of members of the council;
- (e) respecting the calling, holding and conduct of meetings of the council and the Association;
- (f) providing for the establishment and regulation of chapters;
- (g) respecting the management of the property of the Association;
- (h) providing for the borrowing of money on the credit of the Association and the charging, mortgaging, hypothecating or pledging of any of the real or personal property of the Association to secure any money borrowed or other debt or any other obligation or liability of the Association;
- (i) respecting the application of the funds of the Association, and the investment and re-investment of any of its funds not immediately required in any investments that may from time to time be authorized investments for joint stock insurance companies and cash mutual insurance corporations under *The R.S.O. 1960, c. 71 Corporations Act*;
- (j) defining the composition and functions of the board of examiners;
- (k) providing for the establishment of scholarships, bursaries and prizes;
- (l) providing for the appointment of committees of the council and defining their composition and functions;
- (m) providing for the closing of the register and the restriction of recording changes of addresses of the registrants for a period of time not exceeding forty-



eight hours, exclusive of Sundays and holidays, immediately preceding any meeting of the members or any election;

- (n) respecting the registration of members and the recording of licensees, graduates, undergraduates and assistants to professional engineers;
- (o) for maintaining a system for the recording of registrants, their residence addresses and the regions in which they are resident and for the recording of the names of official representatives of partnerships, associations of persons or corporations;
- (p) providing for services to encourage and assist members in the development of their professional competence and conduct and in carrying on the practice of professional engineering;
- (q) fixing and providing for levying and collecting or remitting annual and other fees, levies and assessments;
- (r) prescribing forms and providing for their use;
- (s) respecting all other things that are deemed necessary or convenient for the attainment of the objects of the Association and the efficient conduct of its business.

#### Approval

(2) No by-law is effective until it has been submitted to the members for approval by means of a letter ballot returnable within thirty days after the mailing thereof and unless it has been approved by a majority of those voting within the prescribed time. R.S.O. 1960, c. 309, s. 5, cl. a, *amended*.

#### Construction

(3) As between a registrant and the Association, the ruling of the council on the construction and interpretation of any by-law is final. R.S.O. 1960, c. 309, s. 4 (2), *amended*.

#### Code of ethics

**9.**—(1) The council shall prepare and publish from time to time a code of ethics containing standards of conduct designed for the protection of the public, which standards members and licensees must subscribe to and follow in the practice of professional engineering.

#### Copies

(2) Copies of the code of ethics shall be sent to the members and licensees and shall be available free of charge to members of the public who apply therefor. *New*.



SECTION 9. This new section implements Recommendation 9 of the McRuer Report (page 1209 of Volume 3).

SECTION 11. In clause *d* of subsection 1 the experience requirement is increased from five to six years to conform with the requirement in all other provinces of Canada.

Provision is also made for the admission in certain circumstances of persons who do not reside in Ontario.

**10.** The council may authorize participation by the Association in the activities of the Canadian Council of Professional Engineers, as a constituent association thereof. *New.* Canadian Council of Professional Engineers.

#### MEMBERSHIP

**11.—(1)** Any applicant for membership who,

Qualification for membership

(a) resides,

(i) in Ontario,

(ii) out of Ontario and is employed for an indefinite period as a full-time employee of an employer having works or facilities in Ontario and is required by the terms of his employment to practise professional engineering in respect of such works or facilities or has a place of employment in Ontario and practises or proposes to practise professional engineering in Ontario on a full-time basis;

(b) is twenty-one or more years of age;

(c) has passed the examinations prescribed by the council or is exempted therefrom pursuant to subsection 3 or 6;

(d) has had six or more years of experience in engineering work satisfactory to the council; and

(e) provides satisfactory evidence of good character,

shall be admitted as a member by the council.

(2) Each applicant for membership shall submit upon the prescribed form evidence of his educational qualifications and engineering experience, information as to his residence and at least three references as to his character and engineering experience, and he may be required by the council to verify the statements set out in his application by affidavit. R.S.O. 1960, c. 309, s. 10 (1, 2), *amended.* Evidence of qualification

(3) The council may exempt an applicant from any of the examinations mentioned in clause c of subsection 1 if the council is of the opinion that the applicant has adequate academic and other qualifications. *New.* Credit for academic and other qualifications

Credit for  
time spent  
at a  
university

(4) Where the applicant is a graduate, upon presenting evidence of the actual time during which he was under instruction as an undergraduate in a university, the council shall grant him the time spent under such instruction in reduction of the six-year period of engineering experience required by clause *d* of subsection 1, but only in so far as the total exemption granted does not exceed four years. R.S.O. 1960, c. 309, s. 10 (4), *amended*.

Board of  
examiners  
to consider  
applications

(5) The council may for the purpose of subsection 3 or 4 require the board of examiners to consider and make recommendations to the council with respect to any applications for exemption, including an application for exemption of a graduate in honours science. *New*.

Saving

(6) The council shall exempt from the examinations mentioned in clause *c* of subsection 1 any person who resides in Ontario on the day this Act comes into force and who has been engaged in the performance of any engineering work specified in clause *e* of section 2 of *The Professional Engineers Act*, being chapter 309 of the Revised Statutes of Ontario, 1960, for a period or periods of not less than six years in the aggregate, if such person submits to the council, within one year from the day this Act comes into force, satisfactory evidence of having been so engaged. *New*.

Admission  
of members  
of other  
associations

**12.** The council may, upon application and satisfactory proof of residence, admit as a member any person who resides in Ontario, or who resides out of Ontario under the circumstances set out in subclause ii of clause *a* of subsection 1 of section 11, and who furnishes satisfactory proof,

- (a) that he is a member of an association of professional engineers in another province or a territory of Canada that has objects similar to those of the Association and requirements for membership no less exacting than those in effect in Ontario; or
- (b) that he is a member of an association of professional engineers in another part of the Commonwealth or in the United States of America that has objects similar to those of the Association and requirements for membership no less exacting than those in effect in Ontario.

Students  
and  
assistants

**13.** Persons who are engaged as assistants to professional engineers in categories recognized by the council and graduates and undergraduates who have not completed the period of engineering experience required by this Act and who con-

template applying for membership on the completion of the period of engineering experience may, upon application in the prescribed form, be recorded in the Association's register but not as members of the Association until fully qualified, and upon being so recorded are subject to the control of the council in accordance with this Act, the regulations and the by-laws. R.S.O. 1960, c. 309, s. 13, *amended*.

**14.**—(1) The annual fee from a registrant shall be deemed <sup>Annual fee</sup> to be a debt due to the Association and is recoverable from him in the name of the Association in any court of competent jurisdiction. R.S.O. 1960, c. 309, s. 24, *amended*.

(2) Where the annual fee is not paid within six months <sup>Non-payment of annual fee</sup> from the date upon which it became due, the treasurer shall send a written notice of such default by prepaid mail addressed to the registrant's last address as shown on the register, and, if payment is not made within one month thereafter, the registrar, upon the direction of the council, shall delete or cause the name of the registrant to be deleted from the register, and thereupon the registrant ceases to be a member, a licensee, an assistant to a professional engineer, or a graduate or undergraduate recorded pursuant to section 13, as the case may be. R.S.O. 1960, c. 309, s. 25 (1), *amended*.

**15.** Any member who intends to withdraw from the practice of professional engineering and whose fees are paid up shall send written notice thereof to the registrar, whereupon the registrar shall delete his name from the register. <sup>Resignations</sup> R.S.O. 1960, c. 309, s. 25 (2), *amended*.

**16.** Any person who ceased to be a member under subsection 2 of section 14, upon payment of the fees owing at the time he ceased to be a member and the fee for the current year, or any person whose name has been deleted from the register under section 15, upon payment of the fee for the current year, and, in either case, upon production of evidence of good character satisfactory to the council, shall, upon the direction of the council, have his name restored on the register. <sup>Restorations</sup> R.S.O. 1960, c. 309, s. 25 (3), *amended*.

#### LICENSING

**17.**—(1) The registrar may upon application issue a licence <sup>Issue of licences to members of associations of other provinces</sup> to any person who resides in Canada but not in Ontario and who furnishes satisfactory proof that he is a member of an association of professional engineers in another province or a territory of Canada that has objects similar to those of the Association.



Issue of  
licences to  
consulting  
specialists

(2) Any person who does not reside in Canada but who in the opinion of the council is a consulting specialist in a field of professional engineering who has had not less than ten years experience in the practice of his profession, or who furnishes satisfactory evidence that he has qualifications at least equal to those required for registration as a professional engineer in Ontario, may, with the approval of the council, be issued a licence.

Issue of  
licences to  
persons  
from  
provinces  
without  
associations

(3) Any person practising or proposing to practise professional engineering who resides in a territory of Canada in which there is no association of professional engineers that has objects similar to those of the Association, may, with the approval of the council, be issued a licence.

Practise by  
applicant  
for a  
licence

(4) Where an applicant for a licence fails to obtain it promptly for any reason unrelated to his professional capacity or his own neglect, he may practise professional engineering in Ontario for a period of not more than three months without a licence.

Licence to  
be issued  
by the  
registrar

(5) The registrar shall issue a licence in the prescribed form to any person entitled thereto and shall specify therein the work upon which and the name of the employer in Ontario by whom the holder of the licence is to be employed and the period for which it is issued, but in no case shall the period extend beyond the end of the calendar year in which the licence is issued. R.S.O. 1960, c. 309, ss. 14, 22 (4), *amended*.

Additional  
conditions

(6) The council may direct that any licence issued under subsection 2 shall, in addition to the conditions mentioned in subsection 5, contain a condition that the licensee may practise professional engineering in Ontario only in collaboration with a member who shall sign and seal any plans and specifications together with the licensee. *New*.

Where  
licence not  
required

**18.** Any person who is employed as a professional engineer by a public service corporation carrying on an interprovincial undertaking or by the Government of Canada and who is by reason of his employment required to practise professional engineering in a province or territory of Canada other than that of his residence may practise professional engineering in Ontario without a licence, but he shall on demand of the council furnish satisfactory evidence that he is a member of an association of professional engineers in another province or a territory of Canada that has objects similar to those of the Association. R.S.O. 1960, c. 309, s. 15, *amended*.

Seals,  
members

**19.—(1)** Every member shall have a seal of a design approved by the council, the impression of which shall contain





SECTION 20. The provisions respecting the practice of professional engineering by partnerships, associations and corporations are revised in order to ensure a greater degree of control.

the name of the engineer and the words "Registered Professional Engineer" and "Province of Ontario". R.S.O. 1960, c. 309, s. 16, *amended*.

(2) Every licensee shall have a seal of a design approved by the council, the impression of which shall contain the name of the licensee and the words "Licensed Professional Engineer" and "Province of Ontario". Idem, licensees

(3) All final drawings, specifications, plans, reports and other documents involving the practice of professional engineering when issued shall bear the signature and seal of the professional engineer who prepared or approved them. *New*. Signature and use of seal

#### PARTNERSHIPS, CORPORATIONS

**20.**—(1) No partnership, association of persons or corporations as such shall be a member or a licensee, or shall, except as authorized by this section, practise professional engineering. Practise prohibited by partnerships and corporations

(2) A partnership, association of persons or corporation that holds a certificate of authorization may, in its own name, practise professional engineering. Certificates of authorization

(a) if one of its principal or customary functions is to engage in the practice of professional engineering; and

(b) if the practice of professional engineering is done under the responsibility and supervision of a member of the partnership or the association of persons, a director of the corporation, or a full-time employee of the corporation, who in any case is a member; or

(c) if the practice of professional engineering is done under the responsibility and supervision of a member of the partnership or the association of persons, a director of the corporation, or a full-time employee of the corporation, who in any case is a licensee, provided that the practice of professional engineering is restricted to the work specified in the licence of the licensee. R.S.O. 1960, c. 309, s. 18, *amended*.

(3) A partnership, association of persons or corporation that desires a certificate of authorization shall submit to the registrar an application in the prescribed form containing, Applications for certificates

(a) the names and addresses of all its partners, members, officers or directors, as the case may be;

- (b) the names of all its partners, members of associations of persons, directors of corporations, or full-time employees of corporations, as the case may be, who are the members or licensees who will be in charge of professional engineering on its behalf;
- (c) from among the names specified under clause *b* the name or names of its official representative or representatives whose duty it is to ensure that this Act, and the regulations and the by-laws are complied with by the partnership, the association of persons or the corporation, as the case may be,

and shall, whenever there is a change in the particulars given in its application, give notice of the change to the registrar within thirty days after the effective date of the change.

Issue of  
certificates

- (4) If subsection 3 is complied with, the registrar shall issue to the applicant a certificate of authorization.

*Ipso facto*  
revocation  
of  
certificate

- (5) Where the holder of a certificate of authorization ceases to have any official representative, the certificate is *ipso facto* revoked, and the partnership, association of persons or corporation shall not practise professional engineering until a new certificate of authorization is issued.

Reprimand  
of licensee,  
etc.

- (6) Where the council finds that the holder of a certificate of authorization has failed to observe any of the provisions of this section or has been guilty of conduct that would, in the case of a member or licensee, have been professional misconduct, the council may reprimand the holder or suspend or revoke the certificate of authorization.

Application  
of ss. 24, 25,  
26

- (7) Sections 24, 25 and 26 apply *mutatis mutandis* to the refusal to issue a certificate of authorization and to the revocation or suspension of a certificate of authorization.  
*New.*

#### EXAMINATIONS

Board

- 21.**—(1) The council shall appoint annually a board of examiners. R.S.O. 1960, c. 309, s. 19, *amended*.

Central  
examining  
board

- (2) The council may establish conjointly with the council of any association in one or more of the provinces or territories of Canada that has objects similar to those of the Association a central examining board and may delegate to the central examining board all or any of the powers of the council respecting the examination of candidates for admission as members, but any examinations conducted by the central examining board shall be held in at least one place in Ontario. R.S.O. 1960, c. 309, s. 21, *amended*.



SECTION 24—Subsection 1. This new provision implements Recommendation 22 of the McRuer Report (page 1211 of Volume 3).

Subsection 2. This subsection implements Recommendation 14 of the McRuer Report (page 1210 of Volume 3).

SECTION 25—Subsection 1. The provisions of the Act dealing with discipline are revised in order to bring them into line with Recommendations 8, 16, 17, 19 and 20 of the McRuer Report (pages 1209–1211 of Volume 3) and also to set out more explicitly the powers of the council when dealing with disciplinary matters.

## REGISTRAR

**22.**—(1) The registrar shall register in a system of record-<sup>Registrar to record members, etc.</sup> ing approved by the council the names of the members, the licensees, the assistants to professional engineers, and the graduates and the undergraduates. R.S.O. 1960, c. 309, s. 22 (5), *amended*.

(2) The registrar shall keep the register correct and in<sup>Register to be correct</sup> accordance with this Act, the regulations and the by-laws. R.S.O. 1960, c. 309, s. 23, *amended*.

(3) The certificate of the registrar respecting the registra-<sup>Evidence of membership</sup> tion of a person is *prima facie* evidence of the facts certified to therein. R.S.O. 1960, c. 309, s. 27, *amended*.

**23.**—(1) The registrar shall issue to each member admitted<sup>Certificate of membership</sup> to the Association a certificate of membership signed by the president or a vice-president and by the registrar, and bearing the seal of the Association. R.S.O. 1960, c. 309, s. 23 (1), *amended*.

(2) Every member shall keep his certificate of membership<sup>Certificate to be displayed</sup> prominently displayed in his place of business. R.S.O. 1960, c. 309, s. 22 (1).

## HEARINGS UPON APPLICATIONS

**24.**—(1) Where an applicant for membership or a licence<sup>Hearing where application for membership, etc., refused</sup> has met the academic and experience requirements, or an applicant for restoration of his name on the register has paid the required fees and has produced the required evidence of good character, and his application is refused, the council shall, upon the written request of the applicant received by the registrar within fifteen days of the receipt by the applicant of written notice of the refusal, conduct a hearing of the matter.

(2) Section 25 applies *mutatis mutandis* to any hearing<sup>Conduct of hearing</sup> conducted under this section except that upon any such hearing the council may make findings of fact by such standards of proof as are commonly relied upon by reasonable and prudent men in the conduct of their own affairs. R.S.O. 1960, c. 309, s. 26, *amended*.

## HEARINGS, DISCIPLINARY

**25.**—(1) Subject to subsection 2, where the council finds<sup>Powers of council to discipline members</sup> that a person who is a member or licensee is guilty of professional misconduct or has obtained registration as a member



or has been issued a licence by reason of misrepresentation by such person, the council may by order do one or more of the following:

1. Reprimand such person and, if considered proper, direct that the fact of the reprimand be recorded on the register.
2. Suspend the membership or licence of such person for such time as the council considers proper and direct that the re-instatement of such membership or licence on the termination of such suspension be subject to such conditions, if any, as the council considers proper.
3. Direct that the imposition of any penalty be suspended or postponed for such period and upon such terms as the council considers proper and that at the end of such period and upon the compliance with such terms any penalty be remitted.
4. Direct that the membership or licence of such person be cancelled and that the name of such person be removed from the register.
5. Direct that the decision of the council be published in detail or in summary in the official journal of the Association or in such other manner or medium as the council considers appropriate in any particular case.
6. Direct that, where it appears that the proceedings were unwarranted, such costs as to the council seem just be paid by the Association to the member or licensee whose conduct was the subject of such proceedings.

Complaint  
and hearing

(2) The council shall not take any action under subsection 1 unless,

- (a) a complaint under oath has been filed with the registrar and a copy thereof has been served on the person whose conduct is being investigated;
- (b) the person whose conduct is being investigated has been served with a notice of the time and place of the hearing; and
- (c) the council has heard evidence of or on behalf of the complainant and, if the person whose conduct is being investigated appears at the hearing and so





Subsection 4. This new provision implements Recommendation 11 of the McRuer Report (page 1210 of Volume 3).

Subsection 5. This new provision implements Recommendation 12 of the McRuer Report (page 1210 of Volume 3).

Subsection 6. This new provision implements Recommendation 35 of the McRuer Report (page 1262 of Volume 3).

Subsection 7. This new provision implements Recommendation 15 of the McRuer Report (page 1210 of Volume 3).

Subsection 9. This new provision implements Recommendations 13 and 44 of the McRuer Report (pages 1210 and 1263, respectively, of Volume 3).

Subsection 10. This new provision takes into account Recommendations 151, 152, 169, 170, 172, 173 and 174 of the McRuer Report (pages 1278, 1280 and 1281, respectively, of Volume 3).

requests, has heard his evidence or evidence on his behalf and has reached the decision that he is guilty.  
R.S.O. 1960, c. 309, s. 28 (1, 2), *amended*.

(3) Any person presiding at a hearing may administer oaths to witnesses and require them to give evidence under oath. <sup>Power to take sworn evidence</sup>  
R.S.O. 1960, c. 309, s. 28 (1, 2, 3), *amended*.

(4) If the person whose conduct is being investigated fails to appear in answer to the notice at the time and place appointed, the hearing may be conducted in his absence. <sup>Failure to appear</sup>

(5) Hearings shall be held *in camera*, but if the person whose conduct is being investigated requests otherwise by a notice in writing delivered to the registrar before the day fixed for the hearing, the council may conduct the hearing in public or otherwise as it thinks proper. <sup>Disciplinary hearings to be held *in camera*</sup>

(6) The council may adjourn any hearing at any time and from time to time. <sup>Adjournments</sup>

(7) A person whose conduct is being investigated, if present in person at the hearing, has the right to be represented by counsel or agent, to adduce evidence and to make submissions and any such person may be compelled to attend and give evidence in the manner provided in subsection 10. <sup>Attendance of person being investigated</sup>

(8) The oral evidence submitted at a hearing shall be taken down in writing or by any other method authorized by *The Evidence Act*. <sup>Hearing of evidence  
R.S.O. 1960, c. 125</sup>

(9) The rules of evidence applicable in civil proceedings are applicable at hearings, but at a hearing members of the council may take notice of generally recognized technical or scientific facts or opinions within the specialized knowledge of members of the council if the person whose conduct is being investigated has been informed before or during the hearing of any such matters noticed and he has been given an opportunity to contest the material so noticed. <sup>Rules of evidence</sup>

(10) The president, a vice-president, the immediate past president or the registrar may, and the registrar upon application of a person whose conduct is being investigated shall, issue a summons in the form prescribed by regulation, commanding the attendance and examination of any person as a witness, and the production of any document the production of which could be compelled at the trial of an action, to appear before the council at the time and place mentioned in the summons and stating that failure to obey the summons will render the person liable to committal to prison on an <sup>Summons to witness</sup>

application to the Supreme Court, but the person whose attendance is required is entitled to the like conduct money and payment for expenses and loss of time as upon attendance as a witness at a trial in the Supreme Court.

Failure of  
witness to  
appear, etc.

(11) If any person,

- (a) on being duly summoned to appear as a witness makes default in attending; or
- (b) being in attendance as a witness refuses to take an oath legally required to be taken, or to produce any document in his power or control legally required to be produced by him, or to answer any question which he is legally required to answer; or
- (c) does any other thing which would, if the council had been a court of law having power to commit for contempt, have been contempt of that court,

the person presiding at the hearing may certify the offence of that person under his hand to the Supreme Court and the court may thereupon inquire into the alleged offence and after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statements that may be offered in defence, punish or take steps for the punishment of that person in the like manner as if he had been guilty of contempt of court.

Examina-  
tion and  
cross-  
examination

(12) At a hearing the complainant and the person whose conduct is being investigated have the right to examine the witnesses called by them respectively, and to cross-examine the witnesses opposed in interest.

Decisions

(13) The decision taken after a hearing shall be in writing and shall contain or be accompanied by the reasons for the decision in which are set out the findings of fact and the conclusions of law, if any, based thereon, and a copy of the decision and the reasons therefor, together with a notice to the person whose conduct is being investigated of his right of appeal, shall be served upon him within thirty days after the date of the decision.

Record

(14) A record shall be compiled for every hearing consisting of the complaint and the notice referred to in subsection 2, any intermediate rulings or orders made in the course of the proceedings, a transcript of the oral evidence, if a transcript has been prepared, such documentary evidence and things as were received in evidence and the decision and the reasons therefor, provided that documents and things received in

Subsection 11. This new provision is designed to implement Recommendations 174 and 179 of the McRuer Report (page 1281 of Volume 3). It is based upon the corresponding provisions of the Tribunals of Inquiry (Evidence) Act, 1921 of the United Kingdom (see page 444 of Volume 1).

Subsection 12. This provision implements Recommendation 42 of the McRuer Report (page 1263 of Volume 3).

Subsection 13. This provision implements Recommendations 45 and 47 of the McRuer Report (page 1263 of Volume 3).

Subsection 14. This provision implements Recommendation 48 of the McRuer Report (page 1263 of Volume 3). The proviso has been added.

Subsection 15. This provision implements Recommendation 10 of the McRuer Report (pages 1209-10 of Volume 3).



evidence may be released to the persons tendering them when all appeals have been finally disposed of or the right to appeal has terminated.

(15) Any document required to be served under this Act upon a person whose conduct is being investigated shall be served personally upon him, but where it appears that service cannot be effected personally, the document may be served by mailing a copy thereof in a registered letter addressed to him at his last known residence or office address as shown by the records of the Association, and service shall be effected not less than ten days before the date of the hearing or the event or thing required to be done, as the case may be, and proof by affidavit of the service is sufficient. <sup>Service of documents</sup>

(16) Where a member or licensee has been suspended from practising under this section, he may, upon payment of all fees and other costs owing by him to the Association, apply to the council to be re-instated as a member or licensee, as the case may be, and the council may terminate the suspension of such member or licensee upon such terms as it considers proper. <sup>Reinstatement after suspension</sup>

(17) A person whose membership or licence has been cancelled under this section may apply to the council for membership or for a licence, as the case may be, and the council shall, subject to subsection 18, hear the application and make such order as it considers proper and may include as a term of any such order such conditions as the council considers proper to be fulfilled before the applicant is admitted to membership or granted a licence or to be observed by such member or licensee thereafter. <sup>Re-admission after expulsion</sup>

(18) Except with the consent of the council, no application under subsection 17 shall be heard before the expiry of two years from the date of the cancellation of membership or licence or the date of the final disposition of any appeal. <sup>Idem</sup>

(19) Upon a hearing for admission to membership or for the granting of a licence under subsection 17, the council shall follow, in so far as practicable, the procedure provided for in the case of a complaint under this section, and a former member or licensee has the same right of appeal from an order made by the council under subsection 17 as is provided in section 26. <sup>Idem</sup>

(20) The council may appoint a committee to act for and on its behalf composed of not fewer than five members of the council, one of whom shall be the president, a vice-president or the immediate past president, and may delegate to the <sup>Committee of council</sup>



committee all or any of its powers and duties under this section upon such terms and conditions, if any, as the council considers proper, and a decision or order of the committee is the decision or order of the council. *New.*

Practice  
pending  
appeal

(21) Except in the case of professional misconduct constituting incompetence on the part of the person whose conduct was investigated, the suspension or cancellation of the membership or licence of a person whose conduct was investigated under this section does not become effective until any appeal has been finally disposed of or the right of appeal has terminated. R.S.O. 1960, c. 309, s. 28 (5), *amended*.

#### APPEALS

Appeal

**26.**—(1) Any person whom the council has refused to register for membership or whose name the council has refused to restore on the register or to whom the council has refused to issue a licence or who has been reprimanded or whose membership or licence is suspended or cancelled may appeal from the order of refusal, reprimand, suspension or cancellation to the Court of Appeal within fifteen days from the day upon which he is served with the order of refusal, reprimand, suspension or cancellation.

Certified  
copies of  
papers

(2) Upon the request of any person desiring to appeal and upon payment of the cost thereof, the registrar shall furnish such person with a certified copy of all proceedings, evidence, reports, orders and papers received as evidence by the council and any committee thereof appointed pursuant to subsection 20 of section 25 in dealing with and disposing of the matter complained of.

Failure to  
pay costs

(3) If the appellant fails to pay the cost of the certified copy and the cost of such additional copies of the evidence as may be reasonably required for the purposes of the appeal within fifteen days after written demand from the registrar, the appeal shall be deemed to be abandoned.

Procedure  
and record

(4) An appeal under this section shall be by motion, notice of which shall be served upon the registrar, and the record shall consist of a copy, certified by the registrar, of the proceedings before the council or committee thereof, the evidence taken, the report of the council or committee thereof and all decisions, findings and orders of the council or committee thereof in the matter.

Practice

(5) Except as otherwise provided, appeals under this section shall be in accordance with the practice in appeals from the decision or order of a judge of the Supreme Court.

Subsection 21. This provision implements Recommendation 21 of the McRuer Report (page 1210 of Volume 3).

SECTION 26. This appeal section implements Recommendation 23 of the McRuer Report (page 1210 of Volume 3).



(6) Upon the hearing of an appeal under this section the Court of Appeal may make such order as the court deems proper or may refer the matter or any part thereof back to the council with such directions as the court deems proper. <sup>Orders</sup>

(7) The Court of Appeal may make such order as to the costs of the appeal as the court deems proper. R.S.O. 1960, c. 309, s. 28 (4), *amended*. <sup>Costs</sup>

#### OFFENCES

**27.**—(1) Every person, other than a member or a licensee, <sup>Offences, persons</sup> who,

(a) takes and uses orally or otherwise the title “Professional Engineer” or “Registered Professional Engineer” or uses any addition to or abbreviation of either such titles, or any words, name or designation that will lead to the belief that he is a professional engineer, a member or a licensee or, except as permitted by section 2, uses the title or designation “engineer” in such a manner as will lead to the belief that he is a professional engineer, a member or a licensee;

(b) advertises, holds himself out, or conducts himself in any way or by any means as a member or a licensee; or

(c) engages in the practice of professional engineering,

is guilty of an offence. R.S.O. 1960, c. 309, s. 30, *amended*.

(2) Every person who,

*Idem*

(a) wilfully procures or attempts to procure registration under this Act for himself or for another person by making, producing or causing to be made or produced any fraudulent representation or declaration either verbal or written;

(b) knowingly makes any false statement in any application or declaration signed or filed by him under this Act,

is guilty of an offence. R.S.O. 1960, c. 309, s. 33, *part, amended*.

Offences,  
partner-  
ships,  
associations  
and  
corporations

(3) Where a partnership, association of persons or corporation that has no subsisting certificate of authorization,

- (a) practises professional engineering;
- (b) uses orally or otherwise any name, title, description or designation that will lead to the belief that it is entitled to practise professional engineering; or
- (c) advertises, holds itself out or conducts itself in any way or in such manner as to lead to the belief that it is entitled to practise professional engineering,

every member of the partnership, every member of the association of persons, or the corporation and every director thereof, is guilty of an offence.

Idem

(4) Where a partnership, association of persons or corporation that has a subsisting certificate of authorization practises professional engineering in contravention of this Act, every member of the partnership, every member of the association of persons, or the corporation and every director thereof, is guilty of an offence.

Penalties

(5) Every person, member of a partnership, member of an association of persons, and every corporation and director thereof, who is guilty of an offence under this section is, on summary conviction, liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than six months, or to both. R.S.O. 1960, c. 309, ss. 31, 33, *part, amended*.

Limitation  
of  
proceedings

(6) No proceedings shall be commenced for a contravention of any of the provisions of this section after two years from the date of the commission of such contravention. R.S.O. 1960, c. 309, s. 35, *amended*.

#### LIMITATION OF ACTIONS

Limitation  
of actions

**28.—**(1) Except as provided in subsection 2, an action against a member or a licensee for negligence or malpractice in connection with professional services requested of him or rendered by him or under his direction or control shall be commenced within and not later than twelve months after the cause of action arose.

Extension

(2) The court in which an action mentioned in subsection 1 has been or may be brought may extend the period of limitation specified therein either before or after it has expired if the court is satisfied that to do so is just.

SECTION 28. This new section implements Recommendations 29, 30 and 31 of the McRuer Report (page 1211 of Volume 3).





(3) This section does not apply to proceedings under section 25. *New.* Does not apply to disciplinary proceedings

#### TRANSITIONAL PROVISIONS

**29.**—(1) Notwithstanding section 4, the president, the vice-presidents and the elected councillors holding office when this Act comes into force shall continue to hold office until after the first annual election after this Act comes into force. Members of council

(2) Notwithstanding subsections 4 and 5 of section 4, at the first election of councillors after this Act comes into force, one councillor-at-large shall be elected for a two-year term and one councillor-at-large shall be elected for a one-year term and there shall be elected from each of the five regions mentioned in subsection 5 of section 4 one regional councillor for a two-year term and one regional councillor for a one-year term. *New.* First annual election

(3) Notwithstanding subsection 6 of section 4, all councillors who have been appointed by the Lieutenant Governor in Council and are holding office when this Act comes into force shall continue to hold office for the term designated in the order in council by which they were appointed. *New.* Appointed members

#### MISCELLANEOUS

**30.** *The Professional Engineers Act* is repealed. R.S.O. 1960, c. 309, repealed

**31.** This Act comes into force on a day to be named by the Lieutenant Governor by his proclamation. Commencement

**32.** This Act may be cited as *The Professional Engineers Act, 1968-69.* Short title





The Professional Engineers Act, 1968-69

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*1st Reading*

December 19th, 1968

*2nd Reading*

*3rd Reading*

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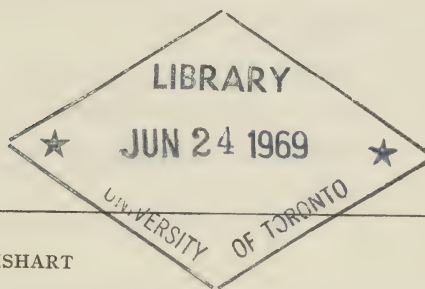
MR. WISHART

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## BILL 48

2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

## The Professional Engineers Act, 1968-69



MR. WISHART

*(Reprinted as amended by the Legal and Municipal Committee)*

TORONTO

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### EXPLANATORY NOTES

GENERAL—At the 1968 Session of the Legislature, Bill 42 was introduced which represented the first comprehensive revision of *The Professional Engineers Act* which was first passed in 1922. Bill 42 was not proceeded with in view of the publication at that time of the Report of the Royal Commission Inquiry into Civil Rights.

The changes made in this revision are designed to facilitate the Association of Professional Engineers of the Province of Ontario in the administration of its affairs and to bring the Act up to date in substance and form.

Most of the differences between this Bill and Bill 42 are changes to conform to the recommendations of the McRuer Report.

BILL 48

1968-69

## The Professional Engineers Act, 1968-69

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

### INTERPRETATION

#### 1. In this Act,

Interpre-  
tation

- (a) "Association" means the Association of Professional Engineers of the Province of Ontario;
- (b) "by-law" means a by-law of the Association;
- (c) "chapter" means a group of members constituted and governed by by-law;
- (d) "council" means the council of the Association;
- (e) "graduate" means a graduate of a university or other educational institution in a course in any branch of engineering or science, the practice of which constitutes professional engineering and which is recognized by the council;
- (f) "licence" means a licence to practise professional engineering issued under this Act;
- (g) "licensee" means a person who holds a subsisting licence;
- (h) "member" means a member of the Association;
- (i) "practice of professional engineering" means the doing of one or more acts of advising on, reporting on, designing of or supervising of the construction of, all public utilities, industrial works, railways, tramways, bridges, tunnels, highways, roads, canals, harbour works, lighthouses, river improvements, wet docks, dry docks, floating docks, dredges,



cranes, drainage works, irrigation works, water-works, water purification plants, sewerage works, sewage disposal works, incinerators, hydraulic works, power transmission systems, steel, concrete or reinforced concrete structures, electric lighting systems, electric power plants, electric machinery, electric or electronic apparatus, electrical or electronic communication systems or equipment, mineral property, mining machinery, mining development, mining operations, gas or oil developments, smelters, refineries, metallurgical machinery, or equipment or apparatus for carrying out such operations, machinery, boilers or their auxiliaries, steam engines, hydraulic turbines, pumps, internal combustion engines or other mechanical structures, chemical or metallurgical machinery, apparatus or processes, or aircraft, and generally all other engineering works including the engineering works and installations relating to airports, airfields or landing strips or relating to town and community planning;

- (j) "professional engineer" means a person who is a member or licensee;
- (k) "region" means a geographical area of Ontario as defined by by-law;
- (l) "register" means the record of registrants maintained by the registrar;
- (m) "registrant" means a person recorded in the register as a member, licensee, an assistant to a professional engineer, a graduate or an undergraduate;
- (n) "registrar" means the registrar of the Association;
- (o) "regulation" means a regulation of the Association;
- (p) "undergraduate" means a student enrolled at but not graduated from a university or other educational institution in a course in any branch of engineering or science, the practice of which constitutes professional engineering and that is recognized by the council. R.S.O. 1960, c. 309, s. 1, *amended*.

Activities  
not affected

## 2. Nothing in this Act prevents,

- (a) any person from performing his duties in the Canadian Armed Forces;



SECTION 2—Clause *e*. The exemption relating to mining work is revised. Provision is made in section 11 (6) for admission to membership in the Association of persons who are engaged in this field.

- (b) any member or licensee of the Ontario Association of Architects under *The Architects Act* or any employee of such member or licensee acting under the direction and responsibility of such member or licensee from performing professional engineering services in the course of any work undertaken or proposed to be undertaken by such member or licensee as an architect; R.S.O. 1960, c. 20
- (c) any person who holds a certificate of qualification under *The Operating Engineers Act* from practising or designating himself as an operating engineer; R.S.O. 1960, c. 282
- (d) any person from practising as a bacteriologist, chemist, geologist, mineralogist or physicist;
- (e) any person from advising on or reporting on any mineral property or prospect;
- (f) any person from operating, executing or supervising any works as owner, contractor, superintendent, foreman, inspector or master,

or requires any such person to become registered or licensed under this Act in order to do any such thing. R.S.O. 1960, c. 309, s. 2, *amended*.

#### THE ASSOCIATION

**3.—**(1) The body politic and corporate known as the “Association of Professional Engineers of the Province of Ontario” incorporated under *The Professional Engineers Act, 1922*, c. 59 Association continued is hereby continued.

(2) All persons who are members of the Association when this Act comes into force or who hereafter are admitted as members constitute the Association. Members R.S.O. 1960, c. 309, s. 3 (1), *amended*.

(3) The objects of the Association are, Objects

- (a) to regulate the practice of professional engineering and to govern the profession in accordance with this Act, the regulations and the by-laws;
- (b) to establish and maintain standards of knowledge and skill among its members; and
- (c) to establish and maintain standards of professional ethics among its members,

in order that the public interest may be served and protected.  
*New.*

Head office (4) The head office of the Association shall be at the city of Toronto.

Property (5) The Association may purchase, acquire or take by gift, devise or bequest for the purposes of the Association and the furtherance of its objects, but for no other purposes or objects, any real or personal property, and may sell, mortgage, lease or otherwise dispose of any such property. R.S.O. 1960, c. 309, s. 3 (4, 5).

#### THE COUNCIL

Council 4.—(1) There shall be a council which shall consist of a president, a first vice-president, a second vice-president, an immediate past president, two elected councillors-at-large, ten elected regional councillors and five appointed councillors, all of whom shall be members and residents of Ontario.

President and vice-presidents (2) The president and the vice-presidents shall have such qualifications as are prescribed by by-law and shall be elected annually by vote of the members. R.S.O. 1960, c. 309, s. 8 (1-3), *amended*.

Councillors-at-large (3) One councillor-at-large shall be elected each year for a two-year term by vote of the members. *New*.

Regional councillors (4) There shall be elected from each of the five regions established and defined by by-law two regional councillors, one to be elected from each region each year for a two-year term by vote of the members who are recorded as residents in that region at the time the election is held.

Appointed councillors (5) The five appointed councillors shall be appointed by the Lieutenant Governor in Council for a term of three years and shall be qualified respectively in the following fields of engineering:

1. Civil.
2. Mechanical, Aeronautical and Industrial.
3. Electrical.
4. Chemical and Metallurgical.
5. Mining and Geology. R.S.O. 1960, c. 309, s. 8 (5, 6), *amended*.

(6) In addition to the councillors mentioned in subsection 1, the Lieutenant Governor in Council may appoint as coun-<sup>Lay councillor; legal councillor</sup>cillors,

(a) a person who is not a member; and

(b) a person who is a barrister and solicitor of at least ten years standing at the bar of Ontario,

both of whom are residents of Ontario.

(7) Persons appointed under subsection 6 shall serve for<sup>Term</sup> a term of three years but are eligible for re-appointment.

(8) Where the president, a vice-president or a councillor<sup>Vacancies</sup> resigns, is absent from three consecutive meetings of the council, becomes incapacitated or dies, the office may be declared vacant by the council, and, if such office should be declared vacant, except in a case of a councillor appointed by the Lieutenant Governor in Council, the council shall fill the vacancy in such manner as is provided by by-law, and in the case of a vacancy in the office of a councillor appointed by the Lieutenant Governor in Council, the Lieutenant Governor in Council may fill the vacancy by appointment of a person of the same class as the councillor causing the vacancy. R.S.O. 1960, c. 309, s. 8 (6, 7), *amended*.

(9) No person shall be appointed or elected to the council<sup>Councillors to be Canadians</sup> unless he is a Canadian citizen or other British subject, and no person shall continue to hold any such office if he ceases to be so qualified. *New*.

5. The council,

(a) shall appoint a registrar and a treasurer; and

(b) may appoint a secretary, an executive director and such other officials as the council deems fit,

and any two or more of such offices may be held by one person. *New*.

6. No action or other proceedings for damages shall be<sup>Liability of council, officers and members</sup> instituted against the council, or any member or official of the council or any person appointed by the council for any act done in good faith in the performance or intended performance of any duty or in the exercise or in the intended exercise of any power under this Act, a regulation or a by-law, or for any neglect or default in the performance or exercise in good faith of any such duty or power. R.S.O. 1960, c. 309, s. 29, *amended*.



**Regulations**     **7.**—(1) The council may make regulations respecting any matter that is outside the scope of the power to pass by-laws specified in section 8 and, without limiting the generality of the foregoing,

- (a) prescribing the scope and conduct of examinations of candidates for registration;
- (b) prescribing the form of the summons referred to in subsection 10 of section 25;
- (c) respecting the practice and procedure for hearings held under this Act;
- (d) defining “professional misconduct” for the purpose of this Act and the regulations;
- (e) defining classes of specialists in the various fields of engineering;
- (f) prescribing the qualifications required of specialists or any class thereof;
- (g) providing for the designation of specialists upon application and examination or otherwise, for the suspension or revocation of such designations, and for the regulation and prohibition of the use of terms, titles or designations by professional engineers indicating specialization in any field of engineering;
- (h) regulating and prohibiting the use of terms, titles or designations by professional engineers in independent practice.

**Approvals**     (2) No regulation is effective,

- (a) until it has been submitted to the members for approval by means of a letter ballot returnable within thirty days after the mailing thereof and it has been approved by a majority of those voting within the prescribed time; and
- (b) until it has been approved by the Lieutenant Governor in Council. *New.*

**By-laws**     **8.**—(1) The council may pass by-laws relating to the administrative and domestic affairs of the Association, and, without limiting the generality of the foregoing,

- (a) respecting the determination and modification of the boundaries of regions and the determination of



SECTION 4—Subsection 4. The method of electing ten of the councillors is changed from a branch basis which is the basis in the present Act to a geographical basis.

Subsections 6, 7. These new provisions implement Recommendations 2 and 7 of the McRuer Report (page 1209 of Volume 3).

regions in which members shall be deemed to reside for the purposes of the election of councillors;

- (b) prescribing procedures for the nomination and election of the councillors and the nomination and election of the president and the vice-presidents and the qualifications necessary to hold any such office;
- (c) prescribing the duties of the councillors and rules governing their conduct;
- (d) respecting the remuneration and reimbursement of members of the council;
- (e) respecting the calling, holding and conduct of meetings of the council and the Association;
- (f) providing for the establishment and regulation of chapters;
- (g) respecting the management of the property of the Association;
- (h) providing for the borrowing of money on the credit of the Association and the charging, mortgaging, hypothecating or pledging of any of the real or personal property of the Association to secure any money borrowed or other debt or any other obligation or liability of the Association;
- (i) respecting the application of the funds of the Association, and the investment and re-investment of any of its funds not immediately required in any investments that may from time to time be authorized investments for joint stock insurance companies and cash mutual insurance corporations under *The R.S.O. 1960, c. 71 Corporations Act*;
- (j) defining the composition and functions of the board of examiners;
- (k) providing for the establishment of scholarships, bursaries and prizes;
- (l) providing for the appointment of committees of the council and defining their composition and functions;
- (m) providing for the closing of the register and the restriction of recording changes of addresses of the registrants for a period of time not exceeding forty-

eight hours, exclusive of Sundays and holidays, immediately preceding any meeting of the members or any election;

- (n) respecting the registration of members and the recording of licensees, graduates, undergraduates and assistants to professional engineers;
- (o) for maintaining a system for the recording of registrants, their residence addresses and the regions in which they are resident and for the recording of the names of official representatives of partnerships, associations of persons or corporations;
- (p) providing for services to encourage and assist members in the development of their professional competence and conduct and in carrying on the practice of professional engineering;
- (q) fixing and providing for levying and collecting or remitting annual and other fees, levies and assessments;
- (r) prescribing forms and providing for their use;
- (s) respecting all other things that are deemed necessary or convenient for the attainment of the objects of the Association and the efficient conduct of its business.

Approval

(2) No by-law is effective until it has been submitted to the members for approval by means of a letter ballot returnable within thirty days after the mailing thereof and unless it has been approved by a majority of those voting within the prescribed time. R.S.O. 1960, c. 309, s. 5, cl. *a*, *amended*.

Construction

(3) As between a registrant and the Association, the ruling of the council on the construction and interpretation of any by-law is final. R.S.O. 1960, c. 309, s. 4 (2), *amended*.

Code of ethics

**9.**—(1) The council shall prepare and publish from time to time a code of ethics containing standards of conduct designed for the protection of the public, which standards members and licensees must subscribe to and follow in the practice of professional engineering.

Copies

(2) Copies of the code of ethics shall be sent to the members and licensees and shall be available free of charge to members of the public who apply therefor. *New*.

SECTIONS 7 and 8. These sections implement Recommendations 25 and 26 of the McRuer Report (page 1211 of Volume 3).



SECTION 9. This new section implements Recommendation 9 of the McRuer Report (page 1209 of Volume 3).



SECTION 11. In clause *d* of subsection 1 the experience requirement is increased from five to six years to conform with the requirement in all other provinces of Canada.

Provision is also made for the admission in certain circumstances of persons who do not reside in Ontario.

**10.** The council may authorize participation by the Association in the activities of the Canadian Council of Professional Engineers, as a constituent association thereof. *New.*

Canadian  
Council of  
Professional  
Engineers

#### MEMBERSHIP

**11.—(1)** Any applicant for membership who,

Qualifica-  
tion for  
membership

(a) resides,

(i) in Ontario,

(ii) out of Ontario and is employed for an indefinite period as a full-time employee of an employer having works or facilities in Ontario and is required by the terms of his employment to practise professional engineering in respect of such works or facilities or has a place of employment in Ontario and practises or proposes to practise professional engineering in Ontario on a full-time basis;

(b) is twenty-one or more years of age;

(c) has passed the examinations prescribed by the council or is exempted therefrom pursuant to subsection 3 or 6;

(d) has had six or more years of experience in engineering work satisfactory to the council; and

(e) provides satisfactory evidence of good character,

shall be admitted as a member by the council.

(2) Each applicant for membership shall submit upon the prescribed form evidence of his educational qualifications and engineering experience, information as to his residence and at least three references as to his character and engineering experience, and he may be required by the council to verify the statements set out in his application by affidavit. R.S.O. 1960, c. 309, s. 10 (1, 2), *amended*.

Evidence of  
qualification

(3) The council may exempt an applicant from any of the examinations mentioned in clause c of subsection 1 if the council is of the opinion that the applicant has adequate academic and other qualifications. *New.*

Credit for  
academic  
and other  
qualifica-  
tions

Credit for  
time spent  
at a  
university

(4) Where the applicant is a graduate, upon presenting evidence of the actual time during which he was under instruction as an undergraduate in a university, the council shall grant him the time spent under such instruction in reduction of the six-year period of engineering experience required by clause *d* of subsection 1, but only in so far as the total exemption granted does not exceed four years. R.S.O. 1960, c. 309, s. 10 (4), *amended*.

Board of  
examiners  
to consider  
applications

(5) The council may for the purpose of subsection 3 or 4 require the board of examiners to consider and make recommendations to the council with respect to any applications for exemption, including an application for exemption of a graduate in honours science. *New*.

Saving

(6) The council shall exempt from the examinations mentioned in clause *c* of subsection 1 any person who resides in Ontario on the day this Act comes into force and who has been engaged in the performance of any engineering work specified in clause *e* of section 2 of *The Professional Engineers Act*, being chapter 309 of the Revised Statutes of Ontario, 1960, for a period or periods of not less than six years in the aggregate, if such person submits to the council, within one year from the day this Act comes into force, satisfactory evidence of having been so engaged. *New*.

Admission  
of members  
of other  
associations

**12.** The council may, upon application and satisfactory proof of residence, admit as a member any person who resides in Ontario, or who resides out of Ontario under the circumstances set out in subclause ii of clause *a* of subsection 1 of section 11, and who furnishes satisfactory proof,

- (a) that he is a member of an association of professional engineers in another province or a territory of Canada that has objects similar to those of the Association and requirements for membership no less exacting than those in effect in Ontario; or
- (b) that he is a member of an association of professional engineers in another part of the Commonwealth or in the United States of America that has objects similar to those of the Association and requirements for membership no less exacting than those in effect in Ontario.

Students  
and  
assistants

**13.** Persons who are engaged as assistants to professional engineers in categories recognized by the council and graduates and undergraduates who have not completed the period of engineering experience required by this Act and who con-

template applying for membership on the completion of the period of engineering experience may, upon application in the prescribed form, be recorded in the Association's register but not as members of the Association until fully qualified, and upon being so recorded are subject to the control of the council in accordance with this Act, the regulations and the by-laws. R.S.O. 1960, c. 309, s. 13, *amended*.

**14.**—(1) The annual fee from a registrant shall be deemed <sup>Annual fee</sup> to be a debt due to the Association and is recoverable from him in the name of the Association in any court of competent jurisdiction. R.S.O. 1960, c. 309, s. 24, *amended*.

(2) Where the annual fee is not paid within six months <sup>Non-payment of annual fee</sup> from the date upon which it became due, the treasurer shall send a written notice of such default by prepaid mail addressed to the registrant's last address as shown on the register, and, if payment is not made within one month thereafter, the registrar, upon the direction of the council, shall delete or cause the name of the registrant to be deleted from the register, and thereupon the registrant ceases to be a member, a licensee, an assistant to a professional engineer, or a graduate or undergraduate recorded pursuant to section 13, as the case may be. R.S.O. 1960, c. 309, s. 25 (1), *amended*.

**15.** Any member who intends to withdraw from the practice of professional engineering and whose fees are paid up shall send written notice thereof to the registrar, whereupon the registrar shall delete his name from the register. R.S.O. 1960, c. 309, s. 25 (2), *amended*. <sup>Resignations</sup>

**16.** Any person who ceased to be a member under subsection 2 of section 14, upon payment of the fees owing at the time he ceased to be a member and the fee for the current year, or any person whose name has been deleted from the register under section 15, upon payment of the fee for the current year, and, in either case, upon production of evidence of good character satisfactory to the council, shall, upon the direction of the council, have his name restored on the register. R.S.O. 1960, c. 309, s. 25 (3), *amended*. <sup>Restorations</sup>

#### LICENSING

**17.**—(1) The registrar may upon application issue a licence <sup>Issue of licences to members of associations of other provinces</sup> to any person who resides in Canada but not in Ontario and who furnishes satisfactory proof that he is a member of an association of professional engineers in another province or a territory of Canada that has objects similar to those of the Association.



Issue of  
licences to  
consulting  
specialists

(2) Any person who does not reside in Canada but who in the opinion of the council is a consulting specialist in a field of professional engineering who has had not less than ten years experience in the practice of his profession, or who furnishes satisfactory evidence that he has qualifications at least equal to those required for registration as a professional engineer in Ontario, may, with the approval of the council, be issued a licence.

Issue of  
licences to  
persons  
from  
provinces  
without  
associations

(3) Any person practising or proposing to practise professional engineering who resides in a territory of Canada in which there is no association of professional engineers that has objects similar to those of the Association, may, with the approval of the council, be issued a licence.

Practise by  
applicant  
for a  
licence

(4) Where an applicant for a licence fails to obtain it promptly for any reason unrelated to his professional capacity or his own neglect, he may practise professional engineering in Ontario for a period of not more than three months without a licence.

Licence to  
be issued  
by the  
registrar

(5) The registrar shall issue a licence in the prescribed form to any person entitled thereto and shall specify therein the work upon which and the name of the employer in Ontario by whom the holder of the licence is to be employed and the period for which it is issued, but in no case shall the period extend beyond the end of the calendar year in which the licence is issued. R.S.O. 1960, c. 309, ss. 14, 22 (4), *amended*.

Additional  
conditions

(6) The council may direct that any licence issued under subsection 2 shall, in addition to the conditions mentioned in subsection 5, contain a condition that the licensee may practise professional engineering in Ontario only in collaboration with a member who shall sign and seal any plans and specifications together with the licensee. *New*.

Where  
licence not  
required

**18.** Any person who is employed as a professional engineer by a public service corporation carrying on an interprovincial undertaking or by the Government of Canada and who is by reason of his employment required to practise professional engineering in a province or territory of Canada other than that of his residence may practise professional engineering in Ontario without a licence, but he shall on demand of the council furnish satisfactory evidence that he is a member of an association of professional engineers in another province or a territory of Canada that has objects similar to those of the Association. R.S.O. 1960, c. 309, s. 15, *amended*.

Seals,  
members

**19.—**(1) Every member shall have a seal of a design approved by the council, the impression of which shall contain



SECTION 20. The provisions respecting the practice of professional engineering by partnerships, associations and corporations are revised in order to ensure a greater degree of control.



the name of the engineer and the words "Registered Professional Engineer" and "Province of Ontario". R.S.O. 1960, c. 309, s. 16, *amended*.

(2) Every licensee shall have a seal of a design approved by the council, the impression of which shall contain the name of the licensee and the words "Licensed Professional Engineer" and "Province of Ontario". Idem, licensees

(3) All final drawings, specifications, plans, reports and other documents involving the practice of professional engineering when issued shall bear the signature and seal of the professional engineer who prepared or approved them. *New*. Signature and use of seal

#### PARTNERSHIPS, CORPORATIONS

**20.**—(1) No partnership, association of persons or corporation as such shall be a member or a licensee, or shall, except as authorized by this section, practise professional engineering. Practice prohibited by partnerships and corporations

(2) A partnership, association of persons or corporation that holds a certificate of authorization may, in its own name, practise professional engineering, Certificates of authorization

(a) if one of its principal or customary functions is to engage in the practice of professional engineering; and

(b) if the practice of professional engineering is done under the responsibility and supervision of a member of the partnership or the association of persons, a director of the corporation, or a full-time employee of the corporation, who in any case is a member; or

(c) if the practice of professional engineering is done under the responsibility and supervision of a member of the partnership or the association of persons, a director of the corporation, or a full-time employee of the corporation, who in any case is a licensee, provided that the practice of professional engineering is restricted to the work specified in the licence of the licensee. R.S.O. 1960, c. 309, s. 18, *amended*.

(3) A partnership, association of persons or corporation that desires a certificate of authorization shall submit to the registrar an application in the prescribed form containing, Applications for certificates

(a) the names and addresses of all its partners, members, officers or directors, as the case may be;

- (b) the names of all its partners, members of associations of persons, directors of corporations, or full-time employees of corporations, as the case may be, who are the members or licensees who will be in charge of professional engineering on its behalf;
- (c) from among the names specified under clause *b* the name or names of its official representative or representatives whose duty it is to ensure that this Act, and the regulations and the by-laws are complied with by the partnership, the association of persons or the corporation, as the case may be,

and shall, whenever there is a change in the particulars given in its application, give notice of the change to the registrar within thirty days after the effective date of the change.

Issue of  
certificates

(4) If subsection 3 is complied with, the registrar shall issue to the applicant a certificate of authorization.

*Ipso facto*  
revocation  
of  
certificate

(5) Where the holder of a certificate of authorization ceases to have any official representative, the certificate is *ipso facto* revoked, and the partnership, association of persons or corporation shall not practise professional engineering until a new certificate of authorization is issued.

Reprimand  
of licensee,  
etc.

(6) Where the council finds that the holder of a certificate of authorization has failed to observe any of the provisions of this section or has been guilty of conduct that would, in the case of a member or licensee, have been professional misconduct, the council may reprimand the holder or suspend or revoke the certificate of authorization.

Application  
of ss. 24, 25,  
26

(7) Sections 24, 25 and 26 apply *mutatis mutandis* to the refusal to issue a certificate of authorization and to the revocation or suspension of a certificate of authorization.  
*New.*

#### EXAMINATIONS

Board

**21.**—(1) The council shall appoint annually a board of examiners. R.S.O. 1960, c. 309, s. 19, *amended*.

Central  
examining  
board

(2) The council may establish conjointly with the council of any association in one or more of the provinces or territories of Canada that has objects similar to those of the Association a central examining board and may delegate to the central examining board all or any of the powers of the council respecting the examination of candidates for admission as members, but any examinations conducted by the central examining board shall be held in at least one place in Ontario. R.S.O. 1960, c. 309, s. 21, *amended*.



SECTION 24—Subsection 1. This new provision implements Recommendation 22 of the McRuer Report (page 1211 of Volume 3).

Subsection 2. This subsection implements Recommendation 14 of the McRuer Report (page 1210 of Volume 3).

SECTION 25—Subsection 1. The provisions of the Act dealing with discipline are revised in order to bring them into line with Recommendations 8, 16, 17, 19 and 20 of the McRuer Report (pages 1209–1211 of Volume 3) and also to set out more explicitly the powers of the council when dealing with disciplinary matters.

## REGISTRAR

**22.**—(1) The registrar shall register in a system of record-Registrar to record members, etc.  
ing approved by the council the names of the members, the licensees, the assistants to professional engineers, and the graduates and the undergraduates. R.S.O. 1960, c. 309, s. 22 (5), *amended*.

(2) The registrar shall keep the register correct and in Register to be correct  
accordance with this Act, the regulations and the by-laws. R.S.O. 1960, c. 309, s. 23, *amended*.

(3) The certificate of the registrar respecting the registra-Evidence of membership  
tion of a person is *prima facie* evidence of the facts certified to therein. R.S.O. 1960, c. 309, s. 27, *amended*.

**23.**—(1) The registrar shall issue to each member admitted Certificate of membership  
to the Association a certificate of membership signed by the president or a vice-president and by the registrar, and bearing the seal of the Association. R.S.O. 1960, c. 309, s. 23 (1), *amended*.

(2) Every member shall keep his certificate of membership Certificate to be displayed  
prominently displayed in his place of business. R.S.O. 1960, c. 309, s. 22 (1).

## HEARINGS UPON APPLICATIONS

**24.**—(1) Where an applicant for membership or a licence Hearing where application for membership, etc., refused  
has met the academic and experience requirements, or an applicant for restoration of his name on the register has paid the required fees and has produced the required evidence of good character, and his application is refused, the council shall, upon the written request of the applicant received by the registrar within fifteen days of the receipt by the applicant of written notice of the refusal, conduct a hearing of the matter.

(2) Section 25 applies *mutatis mutandis* to any hearing Conduct of hearing  
conducted under this section except that upon any such hearing the council may make findings of fact by such standards of proof as are commonly relied upon by reasonable and prudent men in the conduct of their own affairs. R.S.O. 1960, c. 309, s. 26, *amended*.

## HEARINGS, DISCIPLINARY

**25.**—(1) Subject to subsection 2, where the council finds Powers of council to discipline members  
that a person who is a member or licensee is guilty of professional misconduct or has obtained registration as a member



or has been issued a licence by reason of misrepresentation by such person, the council may by order do one or more of the following:

1. Reprimand such person and, if considered proper, direct that the fact of the reprimand be recorded on the register.
2. Suspend the membership or licence of such person for such time as the council considers proper and direct that the re-instatement of such membership or licence on the termination of such suspension be subject to such conditions, if any, as the council considers proper.
3. Direct that the imposition of any penalty be suspended or postponed for such period and upon such terms as the council considers proper and that at the end of such period and upon the compliance with such terms any penalty be remitted.
4. Direct that the membership or licence of such person be cancelled and that the name of such person be removed from the register.
5. Direct that the decision of the council be published in detail or in summary in the official journal of the Association or in such other manner or medium as the council considers appropriate in any particular case.
6. Direct that, where it appears that the proceedings were unwarranted, such costs as to the council seem just be paid by the Association to the member or licensee whose conduct was the subject of such proceedings.

Complaint  
and hearing

(2) The council shall not take any action under subsection 1 unless,

- (a) a complaint under oath has been filed with the registrar and a copy thereof has been served on the person whose conduct is being investigated;
- (b) the person whose conduct is being investigated has been served with a notice of the time and place of the hearing; and
- (c) the council has heard evidence of or on behalf of the complainant and, if the person whose conduct is being investigated appears at the hearing and so





Subsection 4. This new provision implements Recommendation 11 of the McRuer Report (page 1210 of Volume 3).

Subsection 5. This new provision implements Recommendation 12 of the McRuer Report (page 1210 of Volume 3).

Subsection 6. This new provision implements Recommendation 35 of the McRuer Report (page 1262 of Volume 3).

Subsection 7. This new provision implements Recommendation 15 of the McRuer Report (page 1210 of Volume 3).

Subsection 9. This new provision implements Recommendations 13 and 44 of the McRuer Report (pages 1210 and 1263, respectively, of Volume 3).

Subsection 10. This new provision takes into account Recommendations 151, 152, 169, 170, 172, 173 and 174 of the McRuer Report (pages 1278, 1280 and 1281, respectively, of Volume 3).

Subsection 11. This new provision is designed to implement Recommendations 174 and 179 of the McRuer Report (page 1281 of Volume 3). It is based upon the corresponding provisions of the Tribunals of Inquiry (Evidence) Act, 1921 of the United Kingdom (see page 444 of Volume 1).

Subsection 12. This provision implements Recommendation 42 of the McRuer Report (page 1263 of Volume 3).

Subsection 13. This provision implements Recommendations 45 and 47 of the McRuer Report (page 1263 of Volume 3).

Subsection 14. This provision implements Recommendation 48 of the McRuer Report (page 1263 of Volume 3). The proviso has been added.

Subsection 15. This provision implements Recommendation 10 of the McRuer Report (pages 1209-10 of Volume 3).

requests, has heard his evidence or evidence on his behalf and has reached the decision that he is guilty. R.S.O. 1960, c. 309, s. 28 (1, 2), *amended*.

(3) Any person presiding at a hearing may administer oaths to witnesses and require them to give evidence under oath. R.S.O. 1960, c. 309, s. 28 (1, 2, 3), *amended*. <sup>Power to take sworn evidence</sup>

(4) If the person whose conduct is being investigated fails to appear in answer to the notice at the time and place appointed, the hearing may be conducted in his absence. <sup>Failure to appear</sup>

(5) Hearings shall be held *in camera*, but if the person whose conduct is being investigated requests otherwise by a notice in writing delivered to the registrar before the day fixed for the hearing, the council may conduct the hearing in public or otherwise as it thinks proper. <sup>Disciplinary hearings to be held in camera</sup>

(6) The council may adjourn any hearing at any time and from time to time. <sup>Adjournments</sup>

(7) A person whose conduct is being investigated, if present in person at the hearing, has the right to be represented by counsel or agent, to adduce evidence and to make submissions, and any such person may be compelled to attend and give evidence in the manner provided in subsection 10. <sup>Attendance of person being investigated</sup>

(8) The oral evidence submitted at a hearing shall be taken down in writing or by any other method authorized by *The Evidence Act*. <sup>Hearing of evidence R.S.O. 1960, c. 125</sup>

(9) The rules of evidence applicable in civil proceedings are applicable at hearings, but at a hearing members of the council may take notice of generally recognized technical or scientific facts or opinions within the specialized knowledge of members of the council if the person whose conduct is being investigated has been informed before or during the hearing of any such matters noticed and he has been given an opportunity to contest the material so noticed. <sup>Rules of evidence</sup>

(10) The president, a vice-president, the immediate past president or the registrar may, and the registrar upon application of a person whose conduct is being investigated shall, issue a summons in the form prescribed by regulation, commanding the attendance and examination of any person as a witness, and the production of any document the production of which could be compelled at the trial of an action, to appear before the council at the time and place mentioned in the summons and stating that failure to obey the summons will render the person liable to committal to prison on an <sup>Summons to witness</sup>

application to the Supreme Court, but the person whose attendance is required is entitled to the like conduct money and payment for expenses and loss of time as upon attendance as a witness at a trial in the Supreme Court.

Failure of  
witness to  
appear, etc.

(11) If any person,

- (a) on being duly summoned to appear as a witness makes default in attending; or
- (b) being in attendance as a witness refuses to take an oath legally required to be taken, or to produce any document in his power or control legally required to be produced by him, or to answer any question which he is legally required to answer; or
- (c) does any other thing which would, if the council had been a court of law having power to commit for contempt, have been contempt of that court,

the person presiding at the hearing may certify the offence of that person under his hand to the Supreme Court and the court may thereupon inquire into the alleged offence and after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statements that may be offered in defence, punish or take steps for the punishment of that person in the like manner as if he had been guilty of contempt of court.

Examina-  
tion and  
cross-  
examination

(12) At a hearing the complainant and the person whose conduct is being investigated have the right to examine the witnesses called by them respectively, and to cross-examine the witnesses opposed in interest.

Decisions

(13) The decision taken after a hearing shall be in writing and shall contain or be accompanied by the reasons for the decision in which are set out the findings of fact and the conclusions of law, if any, based thereon, and a copy of the decision and the reasons therefor, together with a notice to the person whose conduct is being investigated of his right of appeal, shall be served upon him within thirty days after the date of the decision.

Record

(14) A record shall be compiled for every hearing consisting of the complaint and the notice referred to in subsection 2, any intermediate rulings or orders made in the course of the proceedings, a transcript of the oral evidence, if a transcript has been prepared, such documentary evidence and things as were received in evidence and the decision and the reasons therefor, provided that documents and things received in

Subsection 21. This provision implements Recommendation 21 of the McRuer Report (page 1210 of Volume 3).

SECTION 26. This appeal section implements Recommendation 23 of the McRuer Report (page 1210 of Volume 3).





evidence may be released to the persons tendering them when all appeals have been finally disposed of or the right to appeal has terminated.

(15) Any document required to be served under this Act <sup>Service of documents</sup> upon a person whose conduct is being investigated shall be served personally upon him, but where it appears that service cannot be effected personally, the document may be served by mailing a copy thereof in a registered letter addressed to him at his last known residence or office address as shown by the records of the Association, and service shall be effected not less than ten days before the date of the hearing or the event or thing required to be done, as the case may be, and proof by affidavit of the service is sufficient.

(16) Where a member or licensee has been suspended from practising under this section, he may, upon payment of all fees and other costs owing by him to the Association, apply to the council to be re-instated as a member or licensee, as the case may be, and the council may terminate the suspension of such member or licensee upon such terms as it considers proper. <sup>Reinstatement after suspension</sup>

(17) A person whose membership or licence has been cancelled under this section may apply to the council for membership or for a licence, as the case may be, and the council shall, subject to subsection 18, hear the application and make such order as it considers proper and may include as a term of any such order such conditions as the council considers proper to be fulfilled before the applicant is admitted to membership or granted a licence or to be observed by such member or licensee thereafter. <sup>Re-admission after expulsion</sup>

(18) Except with the consent of the council, no application <sup>Idem</sup> under subsection 17 shall be heard before the expiry of two years from the date of the cancellation of membership or licence or the date of the final disposition of any appeal.

(19) Upon a hearing for admission to membership or for <sup>Idem</sup> the granting of a licence under subsection 17, the council shall follow, in so far as practicable, the procedure provided for in the case of a complaint under this section, and a former member or licensee has the same right of appeal from an order made by the council under subsection 17 as is provided in section 26.

(20) The council may appoint a committee to act for and on its behalf composed of not fewer than five members of the council, one of whom shall be the president, a vice-president or the immediate past president, and may delegate to the <sup>Committee of council</sup>

committee all or any of its powers and duties under this section upon such terms and conditions, if any, as the council considers proper, and a decision or order of the committee is the decision or order of the council. *New.*

Practice  
pending  
appeal

(21) Except in the case of professional misconduct constituting incompetence on the part of the person whose conduct was investigated, the suspension or cancellation of the membership or licence of a person whose conduct was investigated under this section does not become effective until any appeal has been finally disposed of or the right of appeal has terminated. R.S.O. 1960, c. 309, s. 28 (5), *amended.*

#### APPEALS

Appeal

**26.—**(1) Any person whom the council has refused to register for membership or whose name the council has refused to restore on the register or to whom the council has refused to issue a licence or who has been reprimanded or whose membership or licence is suspended or cancelled may appeal from the order of refusal, reprimand, suspension or cancellation to the Court of Appeal within fifteen days from the day upon which he is served with the order of refusal, reprimand, suspension or cancellation.

Certified  
copies of  
papers

(2) Upon the request of any person desiring to appeal and upon payment of the cost thereof, the registrar shall furnish such person with a certified copy of all proceedings, evidence, reports, orders and papers received as evidence by the council and any committee thereof appointed pursuant to subsection 20 of section 25 in dealing with and disposing of the matter complained of.

Failure to  
pay costs

(3) If the appellant fails to pay the cost of the certified copy and the cost of such additional copies of the evidence as may be reasonably required for the purposes of the appeal within fifteen days after written demand from the registrar, the appeal shall be deemed to be abandoned.

Procedure  
and record

(4) An appeal under this section shall be by motion, notice of which shall be served upon the registrar, and the record shall consist of a copy, certified by the registrar, of the proceedings before the council or committee thereof, the evidence taken, the report of the council or committee thereof and all decisions, findings and orders of the council or committee thereof in the matter.

Practice

(5) Except as otherwise provided, appeals under this section shall be in accordance with the practice in appeals from the decision or order of a judge of the Supreme Court.

(6) Upon the hearing of an appeal under this section the Court of Appeal may make such order as the court deems proper or may refer the matter or any part thereof back to the council with such directions as the court deems proper. <sup>Orders</sup>

(7) The Court of Appeal may make such order as to the costs of the appeal as the court deems proper. <sup>Costs</sup> R.S.O. 1960, c. 309, s. 28 (4), *amended*.

#### OFFENCES

**27.**—(1) Every person, other than a member or a licensee, <sup>Offences, persons</sup> who,

(a) takes and uses orally or otherwise the title “Professional Engineer” or “Registered Professional Engineer” or uses any addition to or abbreviation of either such titles, or any words, name or designation that will lead to the belief that he is a professional engineer, a member or a licensee or, except as permitted by section 2, uses the title or designation “engineer” in such a manner as will lead to the belief that he is a professional engineer, a member or a licensee;

(b) advertises, holds himself out, or conducts himself in any way or by any means as a member or a licensee; or

(c) engages in the practice of professional engineering, is guilty of an offence. R.S.O. 1960, c. 309, s. 30, *amended*.

(2) Every person who,

*Idem*

(a) wilfully procures or attempts to procure registration under this Act for himself or for another person by making, producing or causing to be made or produced any fraudulent representation or declaration either verbal or written;

(b) knowingly makes any false statement in any application or declaration signed or filed by him under this Act,

is guilty of an offence. R.S.O. 1960, c. 309, s. 33, *part, amended*.

Offences,  
partner-  
ships,  
associations  
and  
corporations

(3) Where a partnership, association of persons or corporation that has no subsisting certificate of authorization,

- (a) practises professional engineering;
- (b) uses orally or otherwise any name, title, description or designation that will lead to the belief that it is entitled to practise professional engineering; or
- (c) advertises, holds itself out or conducts itself in any way or in such manner as to lead to the belief that it is entitled to practise professional engineering,

every member of the partnership, every member of the association of persons, or the corporation and every director thereof, is guilty of an offence.

Idem

(4) Where a partnership, association of persons or corporation that has a subsisting certificate of authorization practises professional engineering in contravention of this Act, every member of the partnership, every member of the association of persons, or the corporation and every director thereof, is guilty of an offence.

Penalties

(5) Every person, member of a partnership, member of an association of persons, and every corporation and director thereof, who is guilty of an offence under this section is, on summary conviction, liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than six months, or to both. R.S.O. 1960, c. 309, ss. 31, 33, *part, amended*.

Limitation  
of  
proceedings

(6) No proceedings shall be commenced for a contravention of any of the provisions of this section after two years from the date of the commission of such contravention. R.S.O. 1960, c. 309, s. 35, *amended*.

#### LIMITATION OF ACTIONS

Limitation  
of actions

**28.**—(1) Except as provided in subsection 2, an action against a member or a licensee for negligence or malpractice in connection with professional services requested of him or rendered by him or under his direction or control shall be commenced within and not later than twelve months after the cause of action arose.

Extension

(2) The court in which an action mentioned in subsection 1 has been or may be brought may extend the period of limitation specified therein either before or after it has expired if the court is satisfied that to do so is just.

SECTION 28. This new section implements Recommendations 29, 30 and 31 of the McRuer Report (page 1211 of Volume 3).





(3) This section does not apply to proceedings under section 25. *New.* Does not apply to disciplinary proceedings

#### TRANSITIONAL PROVISIONS

**29.**—(1) Notwithstanding section 4, the president, the vice-presidents and the elected councillors holding office when this Act comes into force shall continue to hold office until after the first annual election after this Act comes into force. Members of council

(2) Notwithstanding subsections 4 and 5 of section 4, at the first election of councillors after this Act comes into force, one councillor-at-large shall be elected for a two-year term and one councillor-at-large shall be elected for a one-year term and there shall be elected from each of the five regions mentioned in subsection 5 of section 4 one regional councillor for a two-year term and one regional councillor for a one-year term. *New.* First annual election

(3) Notwithstanding subsection 6 of section 4, all councillors who have been appointed by the Lieutenant Governor in Council and are holding office when this Act comes into force shall continue to hold office for the term designated in the order in council by which they were appointed. *New.* Appointed members

#### MISCELLANEOUS

**30.** *The Professional Engineers Act* is repealed. R.S.O. 1960, c. 309, repealed

**31.** This Act comes into force on a day to be named by the Lieutenant Governor by his proclamation. Commencement

**32.** This Act may be cited as *The Professional Engineers Act, 1968-69.* Short title







The Professional Engineers Act, 1968-69

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*1st Reading*

December 19th, 1968

*2nd Reading*

May 26th, 1969

*3rd Reading*

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MR. WISHART

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(Reprinted as amended by  
the Legal and Municipal Committee)

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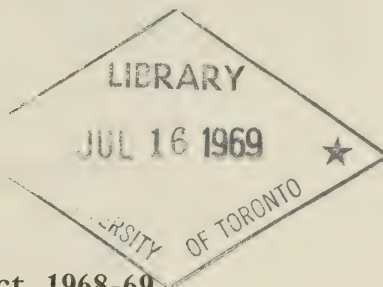
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**BILL 48**

Government  
Publications

2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69



**The Professional Engineers Act, 1968-69**

MR. WISHART

*(Reprinted as amended by the Committee of the Whole House)*

TORONTO

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## EXPLANATORY NOTES

GENERAL—At the 1968 Session of the Legislature, Bill 42 was introduced which represented the first comprehensive revision of *The Professional Engineers Act* which was first passed in 1922. Bill 42 was not proceeded with in view of the publication at that time of the Report of the Royal Commission Inquiry into Civil Rights.

The changes made in this revision are designed to facilitate the Association of Professional Engineers of the Province of Ontario in the administration of its affairs and to bring the Act up to date in substance and form.

Most of the differences between this Bill and Bill 42 are changes to conform to the recommendations of the McRuer Report.

BILL 48

1968-69

## The Professional Engineers Act, 1968-69

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

### INTERPRETATION

#### 1. In this Act,

Interpre-  
tation

- (a) "Association" means the Association of Professional Engineers of the Province of Ontario;
- (b) "by-law" means a by-law of the Association;
- (c) "chapter" means a group of members constituted and governed by by-law;
- (d) "council" means the council of the Association;
- (e) "graduate" means a graduate of a university or other educational institution in a course in any branch of engineering or science, the practice of which constitutes professional engineering and which is recognized by the council;
- (f) "licence" means a licence to practise professional engineering issued under this Act;
- (g) "licensee" means a person who holds a subsisting licence;
- (h) "member" means a member of the Association;
- (i) "practice of professional engineering" means the doing of one or more acts of advising on, reporting on, designing of or supervising of the construction of, all public utilities, industrial works, railways, tramways, bridges, tunnels, highways, roads, canals, harbour works, lighthouses, river improvements, wet docks, dry docks, floating docks, dredges,

cranes, drainage works, irrigation works, water-works, water purification plants, sewerage works, sewage disposal works, incinerators, hydraulic works, power transmission systems, steel, concrete or reinforced concrete structures, electric lighting systems, electric power plants, electric machinery, electric or electronic apparatus, electrical or electronic communication systems or equipment, mineral property, mining machinery, mining development, mining operations, gas or oil developments, smelters, refineries, metallurgical machinery, or equipment or apparatus for carrying out such operations, machinery, boilers or their auxiliaries, steam engines, hydraulic turbines, pumps, internal combustion engines or other mechanical structures, chemical or metallurgical machinery, apparatus or processes, or aircraft, and generally all other engineering works including the engineering works and installations relating to airports, airfields or landing strips or relating to town and community planning;

- (j) "professional engineer" means a person who is a member or licensee;
- (k) "region" means a geographical area of Ontario as defined by by-law;
- (l) "register" means the record of registrants maintained by the registrar;
- (m) "registrant" means a person recorded in the register as a member, licensee, an assistant to a professional engineer, a graduate or an undergraduate;
- (n) "registrar" means the registrar of the Association;
- (o) "regulation" means a regulation of the Association;
- (p) "undergraduate" means a student enrolled at but not graduated from a university or other educational institution in a course in any branch of engineering or science, the practice of which constitutes professional engineering and that is recognized by the council. R.S.O. 1960, c. 309, s. 1, *amended*.

Activities  
not affected

## 2. Nothing in this Act prevents,

- (a) any person from performing his duties in the Canadian Armed Forces;





SECTION 2—Clause *e*. The exemption relating to mining work is revised. Provision is made in section 11 (6) for admission to membership in the Association of persons who are engaged in this field.

- (b) any member or licensee of the Ontario Association of Architects under *The Architects Act* or any employee of such member or licensee acting under the direction and responsibility of such member or licensee from performing professional engineering services in the course of any work undertaken or proposed to be undertaken by such member or licensee as an architect; R.S.O. 1960  
c. 20
- (c) any person who holds a certificate of qualification under *The Operating Engineers Act* from practising or designating himself as an operating engineer; R.S.O. 1960  
c. 232
- (d) any person from practising as a bacteriologist, chemist, geologist, mineralogist or physicist;
- (e) any person from advising on or reporting on any mineral property or prospect;
- (f) any person from operating, executing or supervising any works as owner, contractor, superintendent, foreman, inspector or master,

or requires any such person to become registered or licensed under this Act in order to do any such thing. R.S.O. 1960, c. 309, s. 2, *amended*.

#### THE ASSOCIATION

**3.**—(1) The body politic and corporate known as the “Association of Professional Engineers of the Province of Ontario” incorporated under *The Professional Engineers Act*, 1922, c. 59 is hereby continued. Association  
continued

(2) All persons who are members of the Association when this Act comes into force or who hereafter are admitted as members constitute the Association. R.S.O. 1960, c. 309, s. 3 (1), *amended*. Members

(3) The objects of the Association are, Objects

- (a) to regulate the practice of professional engineering and to govern the profession in accordance with this Act, the regulations and the by-laws;
- (b) to establish and maintain standards of knowledge and skill among its members; and
- (c) to establish and maintain standards of professional ethics among its members,

in order that the public interest may be served and protected.  
*New.*

- Head office (4) The head office of the Association shall be at the city of Toronto.
- Property (5) The Association may purchase, acquire or take by gift, devise or bequest for the purposes of the Association and the furtherance of its objects, but for no other purposes or objects, any real or personal property, and may sell, mortgage, lease or otherwise dispose of any such property. R.S.O. 1960, c. 309, s. 3 (4, 5).

#### THE COUNCIL

- Council 4.—(1) There shall be a council which shall consist of a president, a first vice-president, a second vice-president, an immediate past president, two elected councillors-at-large, ten elected regional councillors and five appointed councillors, all of whom shall be members and residents of Ontario.
- President and vice-presidents (2) The president and the vice-presidents shall have such qualifications as are prescribed by by-law and shall be elected annually by vote of the members. R.S.O. 1960, c. 309, s. 8 (1-3), *amended*.
- Councillors-at-large (3) One councillor-at-large shall be elected each year for a two-year term by vote of the members. *New*.
- Regional councillors (4) There shall be elected from each of the five regions established and defined by by-law two regional councillors, one to be elected from each region each year for a two-year term by vote of the members who are recorded as residents in that region at the time the election is held.
- Appointed councillors (5) The five appointed councillors shall be appointed by the Lieutenant Governor in Council for a term of three years and shall be qualified respectively in the following fields of engineering:
1. Civil.
  2. Mechanical, Aeronautical and Industrial.
  3. Electrical.
  4. Chemical and Metallurgical.
  5. Mining and Geology. R.S.O. 1960, c. 309, s. 8 (5, 6), *amended*.

SECTION 4—Subsection 4. The method of electing ten of the councillors is changed from a branch basis which is the basis in the present Act to a geographical basis.

Subsections 6, 7. These new provisions implement Recommendations 2 and 7 of the McRuer Report (page 1209 of Volume 3).

(6) In addition to the councillors mentioned in subsection 1, the Lieutenant Governor in Council may appoint as coun-<sup>Lay councillor legal councillor</sup>cillors,

- (a) a person who is not a member; and
- (b) a person who is a barrister and solicitor of at least ten years standing at the bar of Ontario,

both of whom are residents of Ontario.

(7) Persons appointed under subsection 6 shall serve for <sup>Term</sup>a term of three years but are eligible for re-appointment.

(8) Where the president, a vice-president or a councillor <sup>Vacancies</sup>resigns, is absent from three consecutive meetings of the council, becomes incapacitated or dies, the office may be declared vacant by the council, and, if such office should be declared vacant, except in a case of a councillor appointed by the Lieutenant Governor in Council, the council shall fill the vacancy in such manner as is provided by by-law, and in the case of a vacancy in the office of a councillor appointed by the Lieutenant Governor in Council, the Lieutenant Governor in Council may fill the vacancy by appointment of a person of the same class as the councillor causing the vacancy. R.S.O. 1960, c. 309, s. 8 (6, 7), *amended*.

(9) No person shall be appointed or elected to the council <sup>Councillors to be Canadians</sup>unless he is a Canadian citizen or other British subject, and no person shall continue to hold any such office if he ceases to be so qualified. *New*.

## 5. The council,

- (a) shall appoint a registrar and a treasurer; and
- (b) may appoint a secretary, an executive director and such other officials as the council deems fit,

Registrar,  
treasurer,  
secretary,  
executive  
director

and any two or more of such offices may be held by one person. *New*.

6. No action or other proceedings for damages shall be <sup>Liability of council, officers and members</sup>instituted against the council, or any member or official of the council or any person appointed by the council for any act done in good faith in the performance or intended performance of any duty or in the exercise or in the intended exercise of any power under this Act, a regulation or a by-law, or for any neglect or default in the performance or exercise in good faith of any such duty or power. R.S.O. 1960, c. 309, s. 29, *amended*.



Regulations **7.**—(1) The council may make regulations respecting any matter that is outside the scope of the power to pass by-laws specified in section 8 and, without limiting the generality of the foregoing,

- (a) prescribing the scope and conduct of examinations of candidates for registration;
- (b) prescribing the form of the summons referred to in subsection 10 of section 25;
- (c) respecting the practice and procedure for hearings held under this Act;
- (d) defining “professional misconduct” for the purpose of this Act and the regulations;
- (e) defining classes of specialists in the various fields of engineering;
- (f) prescribing the qualifications required of specialists or any class thereof;
- (g) providing for the designation of specialists upon application and examination or otherwise, for the suspension or revocation of such designations, and for the regulation and prohibition of the use of terms, titles or designations by professional engineers indicating specialization in any field of engineering;
- (h) regulating and prohibiting the use of terms, titles or designations by professional engineers in independent practice.

Approvals (2) No regulation is effective,

- (a) until it has been submitted to the members for approval by means of a letter ballot returnable within thirty days after the mailing thereof and it has been approved by a majority of those voting within the prescribed time; and
- (b) until it has been approved by the Lieutenant Governor in Council. *New.*

By-laws **8.**—(1) The council may pass by-laws relating to the administrative and domestic affairs of the Association, and, without limiting the generality of the foregoing,

- (a) respecting the determination and modification of the boundaries of regions and the determination of

SECTIONS 7 and 8. These sections implement Recommendations 25 and 26 of the McRuer Report (page 1211 of Volume 3).



regions in which members shall be deemed to reside for the purposes of the election of councillors;

- (b) prescribing procedures for the nomination and election of the councillors and the nomination and election of the president and the vice-presidents and the qualifications necessary to hold any such office;
- (c) prescribing the duties of the councillors and rules governing their conduct;
- (d) respecting the remuneration and reimbursement of members of the council;
- (e) respecting the calling, holding and conduct of meetings of the council and the Association;
- (f) providing for the establishment and regulation of chapters;
- (g) respecting the management of the property of the Association;
- (h) providing for the borrowing of money on the credit of the Association and the charging, mortgaging, hypothecating or pledging of any of the real or personal property of the Association to secure any money borrowed or other debt or any other obligation or liability of the Association;
- (i) respecting the application of the funds of the Association, and the investment and re-investment of any of its funds not immediately required in any investments that may from time to time be authorized investments for joint stock insurance companies and cash mutual insurance corporations under *The R.S.O. 1960, c. 71 Corporations Act*;
- (j) defining the composition and functions of the board of examiners;
- (k) providing for the establishment of scholarships, bursaries and prizes;
- (l) providing for the appointment of committees of the council and defining their composition and functions;
- (m) providing for the closing of the register and the restriction of recording changes of addresses of the registrants for a period of time not exceeding forty-

eight hours, exclusive of Sundays and holidays, immediately preceding any meeting of the members or any election;

- (n) respecting the registration of members and the recording of licensees, graduates, undergraduates and assistants to professional engineers;
- (o) for maintaining a system for the recording of registrants, their residence addresses and the regions in which they are resident and for the recording of the names of official representatives of partnerships, associations of persons or corporations;
- (p) providing for services to encourage and assist members in the development of their professional competence and conduct and in carrying on the practice of professional engineering;
- (q) fixing and providing for levying and collecting or remitting annual and other fees, levies and assessments;
- (r) prescribing forms and providing for their use;
- (s) respecting all other things that are deemed necessary or convenient for the attainment of the objects of the Association and the efficient conduct of its business.

#### Approval

(2) No by-law is effective until it has been submitted to the members for approval by means of a letter ballot returnable within thirty days after the mailing thereof and unless it has been approved by a majority of those voting within the prescribed time. R.S.O. 1960, c. 309, s. 5, cl. *a*, *amended*.

#### Construction

(3) As between a registrant and the Association, the ruling of the council on the construction and interpretation of any by-law is final. R.S.O. 1960, c. 309, s. 4 (2), *amended*.

#### Code of ethics

**9.**—(1) The council shall prepare and publish from time to time a code of ethics containing standards of conduct designed for the protection of the public, which standards members and licensees must subscribe to and follow in the practice of professional engineering.

#### Copies

(2) Copies of the code of ethics shall be sent to the members and licensees and shall be available free of charge to members of the public who apply therefor. *New*.

SECTION 9. This new section implements Recommendation 9 of the McRuer Report (page 1209 of Volume 3).

SECTION 11. In clause *d* of subsection 1 the experience requirement is increased from five to six years to conform with the requirement in all other provinces of Canada.

Provision is also made for the admission in certain circumstances of persons who do not reside in Ontario.



**10.** The council may authorize participation by the Association in the activities of the Canadian Council of Professional Engineers, as a constituent association thereof. *New.* Canadian Council of Professional Engineers

#### MEMBERSHIP

**11.—(1)** Any applicant for membership who,

Qualification for membership

(a) resides,

(i) in Ontario,

(ii) out of Ontario and is employed for an indefinite period as a full-time employee of an employer having works or facilities in Ontario and is required by the terms of his employment to practise professional engineering in respect of such works or facilities or has a place of employment in Ontario and practises or proposes to practise professional engineering in Ontario on a full-time basis;

(b) is twenty-one or more years of age;

(c) has passed the examinations prescribed by the council or is exempted therefrom pursuant to subsection 3 or 6;

(d) has had six or more years of experience in engineering work satisfactory to the council; and

(e) provides satisfactory evidence of good character,

shall be admitted as a member by the council.

(2) Each applicant for membership shall submit upon the prescribed form evidence of his educational qualifications and engineering experience, information as to his residence and at least three references as to his character and engineering experience, and he may be required by the council to verify the statements set out in his application by affidavit. R.S.O. 1960, c. 309, s. 10 (1, 2), *amended.* Evidence of qualification

(3) The council may exempt an applicant from any of the examinations mentioned in clause c of subsection 1 if the council is of the opinion that the applicant has adequate academic and other qualifications. *New.* Credit for academic and other qualifications

Credit for  
time spent  
at a  
university

(4) Where the applicant is a graduate, upon presenting evidence of the actual time during which he was under instruction as an undergraduate in a university, the council shall grant him the time spent under such instruction in reduction of the six-year period of engineering experience required by clause *d* of subsection 1, but only in so far as the total exemption granted does not exceed four years. R.S.O. 1960, c. 309, s. 10 (4), *amended*.

Board of  
examiners  
to consider  
applications

(5) The council may for the purpose of subsection 3 or 4 require the board of examiners to consider and make recommendations to the council with respect to any applications for exemption, including an application for exemption of a graduate in honours science. *New*.

Saving

(6) The council shall exempt from the examinations mentioned in clause *c* of subsection 1 any person who resides in Ontario on the day this Act comes into force and who has been engaged in the performance of any engineering work specified in clause *e* of section 2 of *The Professional Engineers Act*, being chapter 309 of the Revised Statutes of Ontario, 1960, for a period or periods of not less than six years in the aggregate, if such person submits to the council, within one year from the day this Act comes into force, satisfactory evidence of having been so engaged. *New*.

Admission  
of members  
of other  
associations

**12.** The council may, upon application and satisfactory proof of residence, admit as a member any person who resides in Ontario, or who resides out of Ontario under the circumstances set out in subclause ii of clause *a* of subsection 1 of section 11, and who furnishes satisfactory proof,

- (a) that he is a member of an association of professional engineers in another province or a territory of Canada that has objects similar to those of the Association and requirements for membership no less exacting than those in effect in Ontario; or
- (b) that he is a member of an association of professional engineers in another part of the Commonwealth or in the United States of America that has objects similar to those of the Association and requirements for membership no less exacting than those in effect in Ontario.

Students  
and  
assistants

**13.—(1)** Persons who are engaged as assistants to professional engineers in categories recognized by the council and graduates and undergraduates who have not completed the period of engineering experience required by this Act and who contemplate applying for membership on the completion of the period of engineering experience may, upon application in

the prescribed form, be recorded in the register but not as members of the Association until fully qualified, and upon being so recorded are subject to the control of the council in accordance with this Act, the regulations and the by-laws. R.S.O. 1960, c. 309, s. 13, *amended*.

(2) Any registrant whose name is recorded in the register pursuant to subsection 1 may, upon application, have his name deleted from the register. Deletion of names

**14.**—(1) The annual fee from a registrant shall be deemed to be a debt due to the Association and is recoverable from him in the name of the Association in any court of competent jurisdiction. R.S.O. 1960, c. 309, s. 24, *amended*. Annual fee

(2) Where the annual fee is not paid within six months from the date upon which it became due, the treasurer shall send a written notice of such default by prepaid mail addressed to the registrant's last address as shown on the register, and, if payment is not made within one month thereafter, the registrar, upon the direction of the council, shall delete or cause the name of the registrant to be deleted from the register, and thereupon the registrant ceases to be a member, a licensee, an assistant to a professional engineer, or a graduate or undergraduate recorded pursuant to section 13, as the case may be. R.S.O. 1960, c. 309, s. 25 (1), *amended*. Non-payment of annual fee

**15.** Any member who intends to withdraw from the practice of professional engineering and whose fees are paid up shall send written notice thereof to the registrar, whereupon the registrar shall delete his name from the register. R.S.O. 1960, c. 309, s. 25 (2), *amended*. Resignations

**16.** Any person who ceased to be a member under subsection 2 of section 14, upon payment of the fees owing at the time he ceased to be a member and the fee for the current year, or any person whose name has been deleted from the register under section 15, upon payment of the fee for the current year, and, in either case, upon production of evidence of good character satisfactory to the council, shall, upon the direction of the council, have his name restored on the register. R.S.O. 1960, c. 309, s. 25 (3), *amended*. Restorations

#### LICENSING

**17.**—(1) The registrar may upon application issue a licence to any person who resides in Canada but not in Ontario and who furnishes satisfactory proof that he is a member of an association of professional engineers in another province or a territory of Canada that has objects similar to those of the Association. Issue of licences to members of associations of other provinces

Issue of  
licences to  
consulting  
specialists

(2) Any person who does not reside in Canada but who in the opinion of the council is a consulting specialist in a field of professional engineering who has had not less than ten years experience in the practice of his profession, or who furnishes satisfactory evidence that he has qualifications at least equal to those required for registration as a professional engineer in Ontario, may, with the approval of the council, be issued a licence.

Issue of  
licences to  
persons  
from  
provinces  
without  
associations

(3) Any person practising or proposing to practise professional engineering who resides in a territory of Canada in which there is no association of professional engineers that has objects similar to those of the Association, may, with the approval of the council, be issued a licence.

Practise by  
applicant  
for a  
licence

(4) Where an applicant for a licence fails to obtain it promptly for any reason unrelated to his professional capacity or his own neglect, he may practise professional engineering in Ontario for a period of not more than three months without a licence.

Licence to  
be issued  
by the  
registrar

(5) The registrar shall issue a licence in the prescribed form to any person entitled thereto and shall specify therein the work upon which and the name of the employer in Ontario by whom the holder of the licence is to be employed and the period for which it is issued, but in no case shall the period extend beyond the end of the calendar year in which the licence is issued. R.S.O. 1960, c. 309, ss. 14, 22 (4), *amended*.

Additional  
conditions

(6) The council may direct that any licence issued under subsection 2 shall, in addition to the conditions mentioned in subsection 5, contain a condition that the licensee may practise professional engineering in Ontario only in collaboration with a member who shall sign and seal any plans and specifications together with the licensee. *New*.

Where  
licence not  
required

**18.** Any person who is employed as a professional engineer by a public service corporation carrying on an interprovincial undertaking or by the Government of Canada and who is by reason of his employment required to practise professional engineering in a province or territory of Canada other than that of his residence may practise professional engineering in Ontario without a licence, but he shall on demand of the council furnish satisfactory evidence that he is a member of an association of professional engineers in another province or a territory of Canada that has objects similar to those of the Association. R.S.O. 1960, c. 309, s. 15, *amended*.

Seals,  
members

**19.—**(1) Every member shall have a seal of a design approved by the council, the impression of which shall contain





SECTION 20. The provisions respecting the practice of professional engineering by partnerships, associations and corporations are revised in order to ensure a greater degree of control.

the name of the engineer and the words "Registered Professional Engineer" and "Province of Ontario". R.S.O. 1960, c. 309, s. 16, *amended*.

(2) Every licensee shall have a seal of a design approved <sup>Idem, licensees</sup> by the council, the impression of which shall contain the name of the licensee and the words "Licensed Professional Engineer" and "Province of Ontario".

(3) All final drawings, specifications, plans, reports and other documents involving the practice of professional engineering when issued shall bear the signature and seal of the professional engineer who prepared or approved them. *New.* <sup>Signature and use of seal</sup>

#### PARTNERSHIPS, CORPORATIONS

**20.**—(1) No partnership, association of persons or corporation as such shall be a member or a licensee, or shall, except as authorized by this section, practise professional engineering. <sup>Practice prohibited by partnerships and corporations</sup>

(2) A partnership, association of persons or corporation that holds a certificate of authorization may, in its own name, practise professional engineering. <sup>Certificates of authorization</sup>

(a) if one of its principal or customary functions is to engage in the practice of professional engineering; and

(b) if the practice of professional engineering is done under the responsibility and supervision of a member of the partnership or the association of persons, a director of the corporation, or a full-time employee of the corporation, who in any case is a member; or

(c) if the practice of professional engineering is done under the responsibility and supervision of a member of the partnership or the association of persons, a director of the corporation, or a full-time employee of the corporation, who in any case is a licensee, provided that the practice of professional engineering is restricted to the work specified in the licence of the licensee. R.S.O. 1960, c. 309, s. 18, *amended*.

(3) A partnership, association of persons or corporation that desires a certificate of authorization shall submit to the registrar an application in the prescribed form containing, <sup>Applications for certificates</sup>

(a) the names and addresses of all its partners, members, officers or directors, as the case may be;



- (b) the names of all its partners, members of associations of persons, directors of corporations, or full-time employees of corporations, as the case may be, who are the members or licensees who will be in charge of professional engineering on its behalf;
- (c) from among the names specified under clause *b* the name or names of its official representative or representatives whose duty it is to ensure that this Act, and the regulations and the by-laws are complied with by the partnership, the association of persons or the corporation, as the case may be,

and shall, whenever there is a change in the particulars given in its application, give notice of the change to the registrar within thirty days after the effective date of the change.

Issue of  
certificates

(4) If subsection 3 is complied with, the registrar shall issue to the applicant a certificate of authorization.

*Ipso facto*  
revocation  
of  
certificate

(5) Where the holder of a certificate of authorization ceases to have any official representative, the certificate is *ipso facto* revoked, and the partnership, association of persons or corporation shall not practise professional engineering until a new certificate of authorization is issued.

Reprimand  
of licensee,  
etc.

(6) Where the council finds that the holder of a certificate of authorization has failed to observe any of the provisions of this section or has been guilty of conduct that would, in the case of a member or licensee, have been professional misconduct, the council may reprimand the holder or suspend or revoke the certificate of authorization.

Application  
of ss. 24, 25,  
26

(7) Sections 24, 25 and 26 apply *mutatis mutandis* to the refusal to issue a certificate of authorization and to the revocation or suspension of a certificate of authorization.  
*New.*

#### EXAMINATIONS

Board

**21.—**(1) The council shall appoint annually a board of examiners. R.S.O. 1960, c. 309, s. 19, *amended*.

Central  
examining  
board

(2) The council may establish conjointly with the council of any association in one or more of the provinces or territories of Canada that has objects similar to those of the Association a central examining board and may delegate to the central examining board all or any of the powers of the council respecting the examination of candidates for admission as members, but any examinations conducted by the central examining board shall be held in at least one place in Ontario. R.S.O. 1960, c. 309, s. 21, *amended*.

## REGISTRAR

**22.**—(1) The registrar shall register in a system of record-<sup>Registrar to record members, etc.</sup> ing approved by the council the names of the members, the licensees, the assistants to professional engineers, and the graduates and the undergraduates. R.S.O. 1960, c. 309, s. 22 (5), *amended*.

(2) The registrar shall keep the register correct and in <sup>Register to be correct</sup> accordance with this Act, the regulations and the by-laws. R.S.O. 1960, c. 309, s. 23, *amended*.

(3) The certificate of the registrar respecting the registra-<sup>Evidence of membership</sup> tion of a person is *prima facie* evidence of the facts certified to therein. R.S.O. 1960, c. 309, s. 27, *amended*.

(4) The registrar shall send to the Lieutenant Governor in <sup>Quarterly report</sup> Council quarterly as of the last days of March, June, September and December in each year a report containing, with respect to the immediately preceding three-month period, the names of the persons,

- (a) who have been granted partial exemption from examinations;
- (b) who have been granted no exemption from examinations;
- (c) who have been refused permission to write examinations; or
- (d) who have not been admitted to membership in the Association, because,
  - (i) their experience in engineering work was not satisfactory to the Council, or
  - (ii) they did not provide satisfactory evidence of good character,

giving, in each case, the reason for the decision, together with such further information and particulars with respect to such matters as the Lieutenant Governor in Council may require.

**23.**—(1) The registrar shall issue to each member admitted to the Association a certificate of membership signed by the president or a vice-president and by the registrar, and bearing the seal of the Association. R.S.O. 1960, c. 309, s. 23 (1), *amended*.<sup>Certificate of membership</sup>

(2) Every member shall keep his certificate of membership prominently displayed in his place of business. R.S.O. 1960, c. 309, s. 22 (1).<sup>Certificate to be displayed</sup>

## HEARINGS, UPON APPLICATIONS

Hearing where application for membership, etc., refused

**24.**—(1) Where an applicant for membership or a licence has met the academic and experience requirements, or an applicant for restoration of his name on the register has paid the required fees and has produced the required evidence of good character, and his application is refused, the council shall, upon the written request of the applicant received by the registrar within fifteen days of the receipt by the applicant of written notice of the refusal, conduct a hearing of the matter.

Conduct of hearing

(2) Section 25 applies *mutatis mutandis* to any hearing conducted under this section except that upon any such hearing the council may make findings of fact by such standards of proof as are commonly relied upon by reasonable and prudent men in the conduct of their own affairs. R.S.O. 1960, c. 309, s. 26, *amended*.

## HEARINGS, DISCIPLINARY

Powers of council to discipline members

**25.**—(1) Subject to subsection 2, where the council finds that a person who is a member or licensee is guilty of professional misconduct or has obtained registration as a member or has been issued a licence by reason of misrepresentation by such person, the council may by order do one or more of the following:

1. Reprimand such person and, if considered proper, direct that the fact of the reprimand be recorded on the register.
2. Suspend the membership or licence of such person for such time as the council considers proper and direct that the re-instatement of such membership or licence on the termination of such suspension be subject to such conditions, if any, as the council considers proper.
3. Direct that the imposition of any penalty be suspended or postponed for such period and upon such terms as the council considers proper and that at the end of such period and upon the compliance with such terms any penalty be remitted.
4. Direct that the membership or licence of such person be cancelled and that the name of such person be removed from the register.
5. Direct that the decision of the council be published in detail or in summary in the official journal of the Association or in such other manner or medium as the council considers appropriate in any particular case.

SECTION 24—Subsection 1. This new provision implements Recommendation 22 of the McRuer Report (page 1211 of Volume 3).

Subsection 2. This subsection implements Recommendation 14 of the McRuer Report (page 1210 of Volume 3).

SECTION 25—Subsection 1. The provisions of the Act dealing with discipline are revised in order to bring them into line with Recommendations 8, 16, 17, 19 and 20 of the McRuer Report (pages 1209–1211 of Volume 3) and also to set out more explicitly the powers of the council when dealing with disciplinary matters.

Subsection 4. This new provision implements Recommendation 11 of the McRuer Report (page 1210 of Volume 3).

Subsection 5. This new provision implements Recommendation 12 of the McRuer Report (page 1210 of Volume 3).

Subsection 6. This new provision implements Recommendation 35 of the McRuer Report (page 1262 of Volume 3).

Subsection 7. This new provision implements Recommendation 15 of the McRuer Report (page 1210 of Volume 3).



6. Direct that, where it appears that the proceedings were unwarranted, such costs as to the council seem just be paid by the Association to the member or licensee whose conduct was the subject of such proceedings.

(2) The council shall not take any action under subsection 1 <sup>Complaint and hearing</sup> unless,

- (a) a complaint under oath has been filed with the registrar and a copy thereof has been served on the person whose conduct is being investigated;
- (b) the person whose conduct is being investigated has been served with a notice of the time and place of the hearing; and
- (c) the council has heard evidence of or on behalf of the complainant and, if the person whose conduct is being investigated appears at the hearing and so requests, has heard his evidence or evidence on his behalf and has reached the decision that he is guilty.  
R.S.O. 1960, c. 309, s. 28 (1, 2), *amended*.

(3) Any person presiding at a hearing may administer <sup>Power to take sworn evidence</sup> oaths to witnesses and require them to give evidence under oath. R.S.O. 1960, c. 309, s. 28 (1, 2, 3), *amended*.

(4) If the person whose conduct is being investigated fails <sup>Failure to appear</sup> to appear in answer to the notice at the time and place appointed, the hearing may be conducted in his absence.

(5) Hearings shall be held *in camera*, but if the person whose <sup>Disciplinary hearings to be held in camera</sup> conduct is being investigated requests otherwise by a notice in writing delivered to the registrar before the day fixed for the hearing, the council shall conduct the hearing in public or otherwise as it thinks proper.

(6) The council may adjourn any hearing at any time and <sup>Adjournments</sup> from time to time.

(7) A person whose conduct is being investigated, if <sup>Attendance of person being investigated</sup> present in person at the hearing, has the right to be represented by counsel or agent, to adduce evidence and to make submissions, and any such person may be compelled to attend and give evidence in the manner provided in subsection 10, but such person shall be advised of his right to object to answer any question under section 9 of *The Evidence Act* and section 5 <sup>R.S.O. 1960, c. 125</sup> of the *Canada Evidence Act*. <sup>R.S.C. 1952, c. 307</sup>

Hearing of  
evidence  
R.S.O. 1960,  
c. 125

(8) The oral evidence submitted at a hearing shall be taken down in writing or by any other method authorized by *The Evidence Act*.

Rules of  
evidence

(9) The rules of evidence applicable in civil proceedings are applicable at hearings, but at a hearing members of the council may take notice of generally recognized technical or scientific facts or opinions within the specialized knowledge of members of the council if the person whose conduct is being investigated has been informed before or during the hearing of any such matters noticed and he has been given an opportunity to contest the material so noticed.

Summons  
to witness

(10) The president, a vice-president, the immediate past president or the registrar may, and the registrar upon application of a person whose conduct is being investigated shall, issue a summons in the form prescribed by regulation, commanding the attendance and examination of any person as a witness, and the production of any document the production of which could be compelled at the trial of an action, to appear before the council at the time and place mentioned in the summons and stating that failure to obey the summons will render the person liable to imprisonment on an application to the Supreme Court, but the person whose attendance is required is entitled to the like conduct money and payment for expenses and loss of time as upon attendance as a witness at a trial in the Supreme Court.

Failure of  
witness to  
appear, etc.

(11) If any person,

- (a) on being duly summoned to appear as a witness makes default in attending; or
- (b) being in attendance as a witness refuses to take an oath legally required to be taken, or to produce any document in his power or control legally required to be produced by him, or to answer any question which he is legally required to answer; or
- (c) does any other thing which would, if the council had been a court of law having power to commit for contempt, have been contempt of that court,

the person presiding at the hearing may certify the offence of that person under his hand to the Supreme Court and the court may thereupon inquire into the alleged offence and after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statements that may be offered in defence, punish or take steps for the punishment of that person in the like manner as if he had been guilty of contempt of court.



Subsection 9. This new provision implements Recommendations 13 and 44 of the McRuer Report (pages 1210 and 1263, respectively, of Volume 3).

Subsection 10. This new provision takes into account Recommendations 151, 152, 169, 170, 172, 173 and 174 of the McRuer Report (pages 1278, 1280 and 1281, respectively, of Volume 3).

Subsection 11. This new provision is designed to implement Recommendations 174 and 179 of the McRuer Report (page 1281 of Volume 3). It is based upon the corresponding provisions of the Tribunals of Inquiry (Evidence) Act, 1921 of the United Kingdom (see page 444 of Volume 1).

Subsection 12. This provision implements Recommendation 42 of the McRuer Report (page 1263 of Volume 3).

Subsection 13. This provision implements Recommendations 45 and 47 of the McRuer Report (page 1263 of Volume 3).

Subsection 14. This provision implements Recommendation 48 of the McRuer Report (page 1263 of Volume 3). The proviso has been added.

Subsection 15. This provision implements Recommendation 10 of the McRuer Report (pages 1209–10 of Volume 3).

(12) At a hearing the complainant and the person whose conduct is being investigated have the right to examine the witnesses called by them respectively, and to cross-examine the witnesses opposed in interest. Examination and cross-examination

(13) The decision taken after a hearing shall be in writing and shall contain or be accompanied by the reasons for the decision in which are set out the findings of fact and the conclusions of law, if any, based thereon, and a copy of the decision and the reasons therefor, together with a notice to the person whose conduct is being investigated of his right of appeal, shall be served upon him within thirty days after the date of the decision. Decisions

(14) A record shall be compiled for every hearing consisting of the complaint and the notice referred to in subsection 2, any intermediate rulings or orders made in the course of the proceedings, a transcript of the oral evidence, if a transcript has been prepared, such documentary evidence and things as were received in evidence and the decision and the reasons therefor, provided that documents and things received in evidence may be released to the persons tendering them when all appeals have been finally disposed of or the right to appeal has terminated. Record

(15) Any document required to be served under this Act upon a person whose conduct is being investigated shall be served personally upon him, but where it appears that service cannot be effected personally, the document may be served by mailing a copy thereof in a registered letter addressed to him at his last known residence or office address as shown by the records of the Association, and service shall be effected not less than ten days before the date of the hearing or the event or thing required to be done, as the case may be, and proof by affidavit of the service is sufficient. Service of documents

(16) Where a member or licensee has been suspended from practising under this section, he may, upon payment of all fees and other costs owing by him to the Association, apply to the council to be re-instated as a member or licensee, as the case may be, and the council may terminate the suspension of such member or licensee upon such terms as it considers proper. Reinstatement after suspension

(17) A person whose membership or licence has been cancelled under this section may apply to the council for membership or for a licence, as the case may be, and the council shall, subject to subsection 18, hear the application and make such order as it considers proper and may include as a term of any such order such conditions as the council Re-admission after expulsion

considers proper to be fulfilled before the applicant is admitted to membership or granted a licence or to be observed by such member or licensee thereafter.

Idem

(18) Except with the consent of the council, no application under subsection 17 shall be heard before the expiry of two years from the date of the cancellation of membership or licence or the date of the final disposition of any appeal.

Idem

(19) Upon a hearing for admission to membership or for the granting of a licence under subsection 17, the council shall follow, in so far as practicable, the procedure provided for in the case of a complaint under this section, and a former member or licensee has the same right of appeal from an order made by the council under subsection 17 as is provided in section 26.

Committee  
of council

(20) The council may appoint a committee to act for and on its behalf composed of not fewer than five members of the council, one of whom shall be the president, a vice-president or the immediate past president, and may delegate to the committee all or any of its powers and duties under this section upon such terms and conditions, if any, as the council considers proper, and a decision or order of the committee is the decision or order of the council. *New.*

Practice  
pending  
appeal

(21) Except in the case of professional misconduct constituting incompetence on the part of the person whose conduct was investigated, the suspension or cancellation of the membership or licence of a person whose conduct was investigated under this section does not become effective until any appeal has been finally disposed of or the right of appeal has terminated. R.S.O. 1960, c. 309, s. 28 (5), *amended.*

#### APPEALS

Appeal

**26.**—(1) Any person whom the council has refused to register for membership or whose name the council has refused to restore on the register or to whom the council has refused to issue a licence or who has been reprimanded or whose membership or licence is suspended or cancelled may appeal from the order of refusal, reprimand, suspension or cancellation to the Court of Appeal within fifteen days from the day upon which he is served with the order of refusal, reprimand, suspension or cancellation.

Certified  
copies of  
papers

(2) Upon the request of any person desiring to appeal and upon payment of the cost thereof, the registrar shall furnish such person with a certified copy of all proceedings, evidence, reports, orders and papers received as evidence by the council

Subsection 21. This provision implements Recommendation 21 of the McRuer Report (page 1210 of Volume 3).

SECTION 26. This appeal section implements Recommendation 23 of the McRuer Report (page 1210 of Volume 3).



and any committee thereof appointed pursuant to subsection 20 of section 25 in dealing with and disposing of the matter complained of.

(3) If the appellant fails to pay the cost of the certified copy and the cost of such additional copies of the evidence as may be reasonably required for the purposes of the appeal within fifteen days after written demand from the registrar, the appeal shall be deemed to be abandoned. <sup>Failure to pay costs</sup>

(4) An appeal under this section shall be by motion, notice of which shall be served upon the registrar, and the record shall consist of a copy, certified by the registrar, of the proceedings before the council or committee thereof, the evidence taken, the report of the council or committee thereof and all decisions, findings and order of the council or committee thereof in the matter. <sup>Procedure and record</sup>

(5) Except as otherwise provided, appeals under this section shall be in accordance with the practice in appeals from the decision or order of a judge of the Supreme Court. <sup>Practice</sup>

(6) Upon the hearing of an appeal under this section the Court of Appeal may make such order as the court deems proper or may refer the matter or any part thereof back to the council with such directions as the court deems proper. <sup>Orders</sup>

(7) The Court of Appeal may make such order as to the costs of the appeal as the court deems proper. R.S.O. 1960, c. 309, s. 28 (4), *amended*. <sup>Costs</sup>

#### OFFENCES

**27.**—(1) Every person, other than a member or a licensee, who, <sup>Offences, persons</sup>

(a) takes and uses orally or otherwise the title "Professional Engineer" or "Registered Professional Engineer" or uses any addition to or abbreviation of either such titles, or any words, name or designation that will lead to the belief that he is a professional engineer, a member or a licensee or, except as permitted by section 2, uses the title or designation "engineer" in such a manner as will lead to the belief that he is a professional engineer, a member or a licensee;

(b) advertises, holds himself out, or conducts himself in any way or by any means as a member or a licensee; or



(c) engages in the practice of professional engineering, is guilty of an offence. R.S.O. 1960, c. 309, s. 30, *amended*.

*Idem*

(2) Every person who,

- (a) wilfully procures or attempts to procure registration under this Act for himself or for another person by making, producing or causing to be made or produced any fraudulent representation or declaration either verbal or written;
- (b) knowingly makes any false statement in any application or declaration signed or filed by him under this Act,

is guilty of an offence. R.S.O. 1960, c. 309, s. 33, *part, amended*.

Offences,  
partner-  
ships,  
associations  
and  
corporations

(3) Where a partnership, association of persons or corporation that has no subsisting certificate of authorization,

- (a) practises professional engineering;
- (b) uses orally or otherwise any name, title, description or designation that will lead to the belief that it is entitled to practise professional engineering; or
- (c) advertises, holds itself out or conducts itself in any way or in such manner as to lead to the belief that it is entitled to practise professional engineering,

every member of the partnership, every member of the association of persons, or the corporation and every director thereof, is guilty of an offence.

*Idem*

(4) Where a partnership, association of persons or corporation that has a subsisting certificate of authorization practises professional engineering in contravention of this Act, every member of the partnership, every member of the association of persons, or the corporation and every director thereof, is guilty of an offence.

**Penalties**

(5) Every person, member of a partnership, member of an association of persons, and every corporation and director thereof, who is guilty of an offence under this section is, on summary conviction, liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than six months, or to both. R.S.O. 1960, c. 309, ss. 31, 33, *part, amended*.

Limitation  
of  
proceedings

(6) No proceedings shall be commenced for a contravention of any of the provisions of this section after two years from the date of the commission of such contravention. R.S.O. 1960, c. 309, s. 35, *amended*.



**SECTION 28.** This new section implements Recommendations 29, 30 and 31 of the McRuer Report (page 1211 of Volume 3).

## LIMITATION OF ACTIONS

**28.**—(1) Except as provided in subsection 2, an action <sup>Limitation of actions</sup> against a member or a licensee for negligence or malpractice in connection with professional services requested of him or rendered by him or under his direction or control shall be commenced within and not later than twelve months after the cause of action arose.

(2) The court in which an action mentioned in subsection 1 <sup>Extension</sup> has been or may be brought may extend the period of limitation specified therein either before or after it has expired if the court is satisfied that to do so is just.

(3) This section does not apply to proceedings under <sup>Does not apply to disciplinary proceedings</sup> section 25. *New.*

## TRANSITIONAL PROVISIONS

**29.**—(1) Notwithstanding section 4, the president, the <sup>Members of council</sup> vice-presidents and the elected councillors holding office when this Act comes into force shall continue to hold office until after the first annual election after this Act comes into force.

(2) Notwithstanding subsections 4 and 5 of section 4, at <sup>First annual election</sup> the first election of councillors after this Act comes into force, one councillor-at-large shall be elected for a two-year term and one councillor-at-large shall be elected for a one-year term and there shall be elected from each of the five regions mentioned in subsection 4 of section 4 one regional councillor for a two-year term and one regional councillor for a one-year term. *New.*

(3) Notwithstanding subsection 6 of section 4, all councillors <sup>Appointed members</sup> who have been appointed by the Lieutenant Governor in Council and are holding office when this Act comes into force shall continue to hold office for the term designated in the order in council by which they were appointed. *New.*

## MISCELLANEOUS

**30.** *The Professional Engineers Act* is repealed. <sup>R.S.O. 1960, c. 309, repealed</sup>

**31.** This Act comes into force on a day to be named by <sup>Commencement</sup> the Lieutenant Governor by his proclamation.

**32.** This Act may be cited as *The Professional Engineers* <sup>Short title</sup> *Act, 1968-69.*

The Professional Engineers Act, 1968-69

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*1st Reading*

December 19th, 1968

*2nd Reading*

May 26th, 1969

*3rd Reading*

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MR. WISHART

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(Reprinted as amended by  
the Committee of the Whole House)

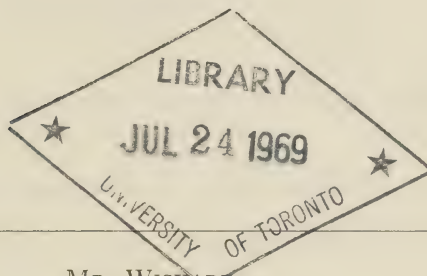
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## BILL 48

2ND SESSION, 28TH LEGISLATURE, ONTARIO  
17 ELIZABETH II, 1968-69

### The Professional Engineers Act, 1968-69



MR. WISHART





BILL 48

1968-69

## The Professional Engineers Act, 1968-69

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

### INTERPRETATION

#### 1. In this Act,

Inter-  
pretation

- (a) "Association" means the Association of Professional Engineers of the Province of Ontario;
- (b) "by-law" means a by-law of the Association;
- (c) "chapter" means a group of members constituted and governed by by-law;
- (d) "council" means the council of the Association;
- (e) "graduate" means a graduate of a university or other educational institution in a course in any branch of engineering or science, the practice of which constitutes professional engineering and which is recognized by the council;
- (f) "licence" means a licence to practise professional engineering issued under this Act;
- (g) "licensee" means a person who holds a subsisting licence;
- (h) "member" means a member of the Association;
- (i) "practice of professional engineering" means the doing of one or more acts of advising on, reporting on, designing of or supervising of the construction of, all public utilities, industrial works, railways, tramways, bridges, tunnels, highways, roads, canals, harbour works, lighthouses, river improvements, wet docks, dry docks, floating docks, dredges,

cranes, drainage works, irrigation works, water-works, water purification plants, sewerage works, sewage disposal works, incinerators, hydraulic works, power transmission systems, steel, concrete or reinforced concrete structures, electric lighting systems, electric power plants, electric machinery, electric or electronic apparatus, electrical or electronic communication systems or equipment, mineral property, mining machinery, mining development, mining operations, gas or oil developments, smelters, refineries, metallurgical machinery, or equipment or apparatus for carrying out such operations, machinery, boilers or their auxiliaries, steam engines, hydraulic turbines, pumps, internal combustion engines or other mechanical structures, chemical or metallurgical machinery, apparatus or processes, or aircraft, and generally all other engineering works including the engineering works and installations relating to airports, airfields or landing strips or relating to town and community planning;

- (j) "professional engineer" means a person who is a member or licensee;
- (k) "region" means a geographical area of Ontario as defined by by-law;
- (l) "register" means the record of registrants maintained by the registrar;
- (m) "registrant" means a person recorded in the register as a member, licensee, an assistant to a professional engineer, a graduate or an undergraduate;
- (n) "registrar" means the registrar of the Association;
- (o) "regulation" means a regulation of the Association;
- (p) "undergraduate" means a student enrolled at but not graduated from a university or other educational institution in a course in any branch of engineering or science, the practice of which constitutes professional engineering and that is recognized by the council. R.S.O. 1960, c. 309, s. 1, *amended*.

Activities  
not affected

**2.** Nothing in this Act prevents,

- (a) any person from performing his duties in the Canadian Armed Forces;

- (b) any member or licensee of the Ontario Association of Architects under *The Architects Act* or any employee<sup>R.S.O. 1960, c. 20</sup> of such member or licensee acting under the direction and responsibility of such member or licensee from performing professional engineering services in the course of any work undertaken or proposed to be undertaken by such member or licensee as an architect;
- (c) any person who holds a certificate of qualification under *The Operating Engineers Act* from practising<sup>R.S.O. 1960, c. 282</sup> or designating himself as an operating engineer;
- (d) any person from practising as a bacteriologist, chemist, geologist, mineralogist or physicist;
- (e) any person from advising on or reporting on any mineral property or prospect;
- (f) any person from operating, executing or supervising any works as owner, contractor, superintendent, foreman, inspector or master,

or requires any such person to become registered or licensed under this Act in order to do any such thing. R.S.O. 1960, c. 309, s. 2, *amended*.

#### THE ASSOCIATION

**3.**—(1) The body politic and corporate known as the<sup>Association continued</sup> "Association of Professional Engineers of the Province of Ontario" incorporated under *The Professional Engineers Act*, 1922, c. 59, 1922 is hereby continued.

(2) All persons who are members of the Association when<sup>Members</sup> this Act comes into force or who hereafter are admitted as members constitute the Association. R.S.O. 1960, c. 309, s. 3 (1), *amended*.

(3) The objects of the Association are,

Objects

- (a) to regulate the practice of professional engineering and to govern the profession in accordance with this Act, the regulations and the by-laws;
- (b) to establish and maintain standards of knowledge and skill among its members; and
- (c) to establish and maintain standards of professional ethics among its members,

in order that the public interest may be served and protected.  
*New.*

- Head office** (4) The head office of the Association shall be at the city of Toronto.
- Property** (5) The Association may purchase, acquire or take by gift, devise or bequest for the purposes of the Association and the furtherance of its objects, but for no other purposes or objects, any real or personal property, and may sell, mortgage, lease or otherwise dispose of any such property. R.S.O. 1960, c. 309, s. 3 (4, 5).

#### THE COUNCIL

- Council** 4.—(1) There shall be a council which shall consist of a president, a first vice-president, a second vice-president, an immediate past president, two elected councillors-at-large, ten elected regional councillors and five appointed councillors, all of whom shall be members and residents of Ontario.
- President and vice-presidents** (2) The president and the vice-presidents shall have such qualifications as are prescribed by by-law and shall be elected annually by vote of the members. R.S.O. 1960, c. 309, s. 8 (1-3), *amended*.
- Councillors-at-large** (3) One councillor-at-large shall be elected each year for a two-year term by vote of the members. *New*.
- Regional councillors** (4) There shall be elected from each of the five regions established and defined by by-law two regional councillors, one to be elected from each region each year for a two-year term by vote of the members who are recorded as residents in that region at the time the election is held.
- Appointed councillors** (5) The five appointed councillors shall be appointed by the Lieutenant Governor in Council for a term of three years and shall be qualified respectively in the following fields of engineering:
1. Civil.
  2. Mechanical, Aeronautical and Industrial.
  3. Electrical.
  4. Chemical and Metallurgical.
  5. Mining and Geology. R.S.O. 1960, c. 309, s. 8 (5, 6), *amended*.



(6) In addition to the councillors mentioned in subsection 1, <sup>Lay councillor; legal councillor</sup> the Lieutenant Governor in Council may appoint as coun-  
cillors,

- (a) a person who is not a member; and
- (b) a person who is a barrister and solicitor of at least ten years standing at the bar of Ontario,

both of whom are residents of Ontario.

(7) Persons appointed under subsection 6 shall serve for <sup>Term</sup> a term of three years but are eligible for re-appointment.

(8) Where the president, a vice-president or a councillor <sup>Vacancies</sup> resigns, is absent from three consecutive meetings of the council, becomes incapacitated or dies, the office may be declared vacant by the council, and, if such office should be declared vacant, except in a case of a councillor appointed by the Lieutenant Governor in Council, the council shall fill the vacancy in such manner as is provided by by-law, and in the case of a vacancy in the office of a councillor appointed by the Lieutenant Governor in Council, the Lieutenant Governor in Council may fill the vacancy by appointment of a person of the same class as the councillor causing the vacancy. R.S.O. 1960, c. 309, s. 8 (6, 7), *amended*.

(9) No person shall be appointed or elected to the council <sup>Councillors to be Canadians</sup> unless he is a Canadian citizen or other British subject, and no person shall continue to hold any such office if he ceases to be so qualified. *New*.

## 5. The council,

- (a) shall appoint a registrar and a treasurer; and
- (b) may appoint a secretary, an executive director and such other officials as the council deems fit,

<sup>Registrar, treasurer, secretary, executive director</sup>

and any two or more of such offices may be held by one person. *New*.

6. No action or other proceedings for damages shall be <sup>Liability of council, officers and members</sup> instituted against the council, or any member or official of the council or any person appointed by the council for any act done in good faith in the performance or intended performance of any duty or in the exercise or in the intended exercise of any power under this Act, a regulation or a by-law, or for any neglect or default in the performance or exercise in good faith of any such duty or power. R.S.O. 1960, c. 309, s. 29, *amended*.

**Regulations**     **7.**—(1) The council may make regulations respecting any matter that is outside the scope of the power to pass by-laws specified in section 8 and, without limiting the generality of the foregoing,

- (a) prescribing the scope and conduct of examinations of candidates for registration;
- (b) prescribing the form of the summons referred to in subsection 10 of section 25;
- (c) respecting the practice and procedure for hearings held under this Act;
- (d) defining “professional misconduct” for the purpose of this Act and the regulations;
- (e) defining classes of specialists in the various fields of engineering;
- (f) prescribing the qualifications required of specialists or any class thereof;
- (g) providing for the designation of specialists upon application and examination or otherwise, for the suspension or revocation of such designations, and for the regulation and prohibition of the use of terms, titles or designations by professional engineers indicating specialization in any field of engineering;
- (h) regulating and prohibiting the use of terms, titles or designations by professional engineers in independent practice.

**Approvals**     (2) No regulation is effective,

- (a) until it has been submitted to the members for approval by means of a letter ballot returnable within thirty days after the mailing thereof and it has been approved by a majority of those voting within the prescribed time; and
- (b) until it has been approved by the Lieutenant Governor in Council. *New.*

**By-laws**     **8.**—(1) The council may pass by-laws relating to the administrative and domestic affairs of the Association, and, without limiting the generality of the foregoing,

- (a) respecting the determination and modification of the boundaries of regions and the determination of

regions in which members shall be deemed to reside for the purposes of the election of councillors;

- (b) prescribing procedures for the nomination and election of the councillors and the nomination and election of the president and the vice-presidents and the qualifications necessary to hold any such office;
- (c) prescribing the duties of the councillors and rules governing their conduct;
- (d) respecting the remuneration and reimbursement of members of the council;
- (e) respecting the calling, holding and conduct of meetings of the council and the Association;
- (f) providing for the establishment and regulation of chapters;
- (g) respecting the management of the property of the Association;
- (h) providing for the borrowing of money on the credit of the Association and the charging, mortgaging, hypothecating or pledging of any of the real or personal property of the Association to secure any money borrowed or other debt or any other obligation or liability of the Association;
- (i) respecting the application of the funds of the Association, and the investment and re-investment of any of its funds not immediately required in any investments that may from time to time be authorized investments for joint stock insurance companies and cash mutual insurance corporations under *The R.S.O. 1960, c. 71 Corporations Act*;
- (j) defining the composition and functions of the board of examiners;
- (k) providing for the establishment of scholarships, bursaries and prizes;
- (l) providing for the appointment of committees of the council and defining their composition and functions;
- (m) providing for the closing of the register and the restriction of recording changes of addresses of the registrants for a period of time not exceeding forty-



eight hours, exclusive of Sundays and holidays, immediately preceding any meeting of the members or any election;

- (n) respecting the registration of members and the recording of licensees, graduates, undergraduates and assistants to professional engineers;
- (o) for maintaining a system for the recording of registrants, their residence addresses and the regions in which they are resident and for the recording of the names of official representatives of partnerships, associations of persons or corporations;
- (p) providing for services to encourage and assist members in the development of their professional competence and conduct and in carrying on the practice of professional engineering;
- (q) fixing and providing for levying and collecting or remitting annual and other fees, levies and assessments;
- (r) prescribing forms and providing for their use;
- (s) respecting all other things that are deemed necessary or convenient for the attainment of the objects of the Association and the efficient conduct of its business.

Approval (2) No by-law is effective until it has been submitted to the members for approval by means of a letter ballot returnable within thirty days after the mailing thereof and unless it has been approved by a majority of those voting within the prescribed time. R.S.O. 1960, c. 309, s. 5, cl. a, *amended*.

Construction (3) As between a registrant and the Association, the ruling of the council on the construction and interpretation of any by-law is final. R.S.O. 1960, c. 309, s. 4 (2), *amended*.

Code of ethics **9.—**(1) The council shall prepare and publish from time to time a code of ethics containing standards of conduct designed for the protection of the public, which standards members and licensees must subscribe to and follow in the practice of professional engineering.

Copies (2) Copies of the code of ethics shall be sent to the members and licensees and shall be available free of charge to members of the public who apply therefor. *New*.

**10.** The council may authorize participation by the Association in the activities of the Canadian Council of Professional Engineers, as a constituent association thereof. *New.* Canadian Council of Professional Engineers

#### MEMBERSHIP

**11.—(1)** Any applicant for membership who,

Qualification for membership

(a) resides,

(i) in Ontario,

(ii) out of Ontario and is employed for an indefinite period as a full-time employee of an employer having works or facilities in Ontario and is required by the terms of his employment to practise professional engineering in respect of such works or facilities or has a place of employment in Ontario and practises or proposes to practise professional engineering in Ontario on a full-time basis;

(b) is twenty-one or more years of age;

(c) has passed the examinations prescribed by the council or is exempted therefrom pursuant to subsection 3 or 6;

(d) has had six or more years of experience in engineering work satisfactory to the council; and

(e) provides satisfactory evidence of good character,

shall be admitted as a member by the council.

(2) Each applicant for membership shall submit upon the prescribed form evidence of his educational qualifications and engineering experience, information as to his residence and at least three references as to his character and engineering experience, and he may be required by the council to verify the statements set out in his application by affidavit. R.S.O. 1960, c. 309, s. 10 (1, 2), *amended*. Evidence of qualification

(3) The council may exempt an applicant from any of the examinations mentioned in clause c of subsection 1 if the council is of the opinion that the applicant has adequate academic and other qualifications. *New.* Credit for academic and other qualifications

Credit for  
time spent  
at a  
university

(4) Where the applicant is a graduate, upon presenting evidence of the actual time during which he was under instruction as an undergraduate in a university, the council shall grant him the time spent under such instruction in reduction of the six-year period of engineering experience required by clause *d* of subsection 1, but only in so far as the total exemption granted does not exceed four years. R.S.O. 1960, c. 309, s. 10 (4), *amended*.

Board of  
examiners  
to consider  
applications

(5) The council may for the purpose of subsection 3 or 4 require the board of examiners to consider and make recommendations to the council with respect to any applications for exemption, including an application for exemption of a graduate in honours science. *New*.

Saving

(6) The council shall exempt from the examinations mentioned in clause *c* of subsection 1 any person who resides in Ontario on the day this Act comes into force and who has been engaged in the performance of any engineering work specified in clause *e* of section 2 of *The Professional Engineers Act*, being chapter 309 of the Revised Statutes of Ontario, 1960, for a period or periods of not less than six years in the aggregate, if such person submits to the council, within one year from the day this Act comes into force, satisfactory evidence of having been so engaged. *New*.

Admission  
of members  
of other  
associations

**12.** The council may, upon application and satisfactory proof of residence, admit as a member any person who resides in Ontario, or who resides out of Ontario under the circumstances set out in subclause ii of clause *a* of subsection 1 of section 11, and who furnishes satisfactory proof,

- (a) that he is a member of an association of professional engineers in another province or a territory of Canada that has objects similar to those of the Association and requirements for membership no less exacting than those in effect in Ontario; or
- (b) that he is a member of an association of professional engineers in another part of the Commonwealth or in the United States of America that has objects similar to those of the Association and requirements for membership no less exacting than those in effect in Ontario.

Students  
and  
assistants

**13.—(1)** Persons who are engaged as assistants to professional engineers in categories recognized by the council and graduates and undergraduates who have not completed the period of engineering experience required by this Act and who contemplate applying for membership on the completion of the period of engineering experience may, upon application in

the prescribed form, be recorded in the register but not as members of the Association until fully qualified, and upon being so recorded are subject to the control of the council in accordance with this Act, the regulations and the by-laws. R.S.O. 1960, c. 309, s. 13, *amended*.

(2) Any registrant whose name is recorded in the register pursuant to subsection 1 may, upon application, have his name deleted from the register. <sup>Deletion of names</sup>

**14.**—(1) The annual fee from a registrant shall be deemed to be a debt due to the Association and is recoverable from him in the name of the Association in any court of competent jurisdiction. R.S.O. 1960, c. 309, s. 24, *amended*. <sup>Annual fee</sup>

(2) Where the annual fee is not paid within six months from the date upon which it became due, the treasurer shall send a written notice of such default by prepaid mail addressed to the registrant's last address as shown on the register, and, if payment is not made within one month thereafter, the registrar, upon the direction of the council, shall delete or cause the name of the registrant to be deleted from the register, and thereupon the registrant ceases to be a member, a licensee, an assistant to a professional engineer, or a graduate or undergraduate recorded pursuant to section 13, as the case may be. R.S.O. 1960, c. 309, s. 25 (1), *amended*. <sup>Non-payment of annual fee</sup>

**15.** Any member who intends to withdraw from the practice of professional engineering and whose fees are paid up shall send written notice thereof to the registrar, whereupon the registrar shall delete his name from the register. R.S.O. 1960, c. 309, s. 25 (2), *amended*. <sup>Resignations</sup>

**16.** Any person who ceased to be a member under subsection 2 of section 14, upon payment of the fees owing at the time he ceased to be a member and the fee for the current year, or any person whose name has been deleted from the register under section 15, upon payment of the fee for the current year, and, in either case, upon production of evidence of good character satisfactory to the council, shall, upon the direction of the council, have his name restored on the register. R.S.O. 1960, c. 309, s. 25 (3), *amended*. <sup>Restorations</sup>

#### LICENSING

**17.**—(1) The registrar may upon application issue a licence to any person who resides in Canada but not in Ontario and who furnishes satisfactory proof that he is a member of an association of professional engineers in another province or a territory of Canada that has objects similar to those of the Association. <sup>Issue of licences to members of associations of other provinces</sup>



Issue of  
licences to  
consulting  
specialists

(2) Any person who does not reside in Canada but who in the opinion of the council is a consulting specialist in a field of professional engineering who has had not less than ten years experience in the practice of his profession, or who furnishes satisfactory evidence that he has qualifications at least equal to those required for registration as a professional engineer in Ontario, may, with the approval of the council, be issued a licence.

Issue of  
licences to  
persons  
from  
provinces  
without  
associations

(3) Any person practising or proposing to practise professional engineering who resides in a territory of Canada in which there is no association of professional engineers that has objects similar to those of the Association, may, with the approval of the council, be issued a licence.

Practise by  
applicant  
for a  
licence

(4) Where an applicant for a licence fails to obtain it promptly for any reason unrelated to his professional capacity or his own neglect, he may practise professional engineering in Ontario for a period of not more than three months without a licence.

Licence to  
be issued  
by the  
registrar

(5) The registrar shall issue a licence in the prescribed form to any person entitled thereto and shall specify therein the work upon which and the name of the employer in Ontario by whom the holder of the licence is to be employed and the period for which it is issued, but in no case shall the period extend beyond the end of the calendar year in which the licence is issued. R.S.O. 1960, c. 309, ss. 14, 22 (4), *amended*.

Additional  
condition

(6) The council may direct that any licence issued under subsection 2 shall, in addition to the conditions mentioned in subsection 5, contain a condition that the licensee may practise professional engineering in Ontario only in collaboration with a member who shall sign and seal any plans and specifications together with the licensee. *New*.

Where  
licence not  
required

**18.** Any person who is employed as a professional engineer by a public service corporation carrying on an interprovincial undertaking or by the Government of Canada and who is by reason of his employment required to practise professional engineering in a province or territory of Canada other than that of his residence may practise professional engineering in Ontario without a licence, but he shall on demand of the council furnish satisfactory evidence that he is a member of an association of professional engineers in another province or a territory of Canada that has objects similar to those of the Association. R.S.O. 1960, c. 309, s. 15, *amended*.

Seals,  
members

**19.—(1)** Every member shall have a seal of a design approved by the council, the impression of which shall contain

the name of the engineer and the words "Registered Professional Engineer" and "Province of Ontario". R.S.O. 1960, c. 309, s. 16, *amended*.

(2) Every licensee shall have a seal of a design approved <sup>Idem, licensees</sup> by the council, the impression of which shall contain the name of the licensee and the words "Licensed Professional Engineer" and "Province of Ontario".

(3) All final drawings, specifications, plans, reports and other documents involving the practice of professional engineering when issued shall bear the signature and seal of the professional engineer who prepared or approved them. *New*.

#### PARTNERSHIPS, CORPORATIONS

**20.**—(1) No partnership, association of persons or corporation as such shall be a member or a licensee, or shall, <sup>Practice prohibited by partnerships and corporations</sup> except as authorized by this section, practise professional engineering.

(2) A partnership, association of persons or corporation <sup>Certificates of authorization</sup> that holds a certificate of authorization may, in its own name, practise professional engineering,

- (a) if one of its principal or customary functions is to engage in the practice of professional engineering; and
- (b) if the practice of professional engineering is done under the responsibility and supervision of a member of the partnership or the association of persons, a director of the corporation, or a full-time employee of the corporation, who in any case is a member; or
- (c) if the practice of professional engineering is done under the responsibility and supervision of a member of the partnership or the association of persons, a director of the corporation, or a full-time employee of the corporation, who in any case is a licensee, provided that the practice of professional engineering is restricted to the work specified in the licence of the licensee. R.S.O. 1960, c. 309, s. 18, *amended*.

(3) A partnership, association of persons or corporation <sup>Applications for certificates</sup> that desires a certificate of authorization shall submit to the registrar an application in the prescribed form containing,

- (a) the names and addresses of all its partners, members, officers or directors, as the case may be;

- (b) the names of all its partners, members of associations of persons, directors of corporations, or full-time employees of corporations, as the case may be, who are the members or licensees who will be in charge of professional engineering on its behalf;
- (c) from among the names specified under clause *b* the name or names of its official representative or representatives whose duty it is to ensure that this Act, and the regulations and the by-laws are complied with by the partnership, the association of persons or the corporation, as the case may be,

and shall, whenever there is a change in the particulars given in its application, give notice of the change to the registrar within thirty days after the effective date of the change.

Issue of  
certificates

(4) If subsection 3 is complied with, the registrar shall issue to the applicant a certificate of authorization.

*Ipso facto*  
revocation  
of  
certificate

(5) Where the holder of a certificate of authorization ceases to have any official representative, the certificate is *ipso facto* revoked, and the partnership, association of persons or corporation shall not practise professional engineering until a new certificate of authorization is issued.

Reprimand  
of licensee,  
etc.

(6) Where the council finds that the holder of a certificate of authorization has failed to observe any of the provisions of this section or has been guilty of conduct that would, in the case of a member or licensee, have been professional misconduct, the council may reprimand the holder or suspend or revoke the certificate of authorization.

Application  
of ss. 24, 25,  
26

(7) Sections 24, 25 and 26 apply *mutatis mutandis* to the refusal to issue a certificate of authorization and to the revocation or suspension of a certificate of authorization.  
*New.*

#### EXAMINATIONS

Board

**21.**—(1) The council shall appoint annually a board of examiners. R.S.O. 1960, c. 309, s. 19, *amended*.

Central  
examining  
board

(2) The council may establish conjointly with the council of any association in one or more of the provinces or territories of Canada that has objects similar to those of the Association a central examining board and may delegate to the central examining board all or any of the powers of the council respecting the examination of candidates for admission as members, but any examinations conducted by the central examining board shall be held in at least one place in Ontario. R.S.O. 1960, c. 309, s. 21, *amended*.



## REGISTRAR

**22.**—(1) The registrar shall register in a system of record-<sup>Registrar to record members, etc.</sup> ing approved by the council the names of the members, the licensees, the assistants to professional engineers, and the graduates and the undergraduates. R.S.O. 1960, c. 309, s. 22 (5), *amended*.

(2) The registrar shall keep the register correct and in<sup>Register to be correct</sup> accordance with this Act, the regulations and the by-laws. R.S.O. 1960, c. 309, s. 23, *amended*.

(3) The certificate of the registrar respecting the registra-<sup>Evidence of membership</sup> tion of a person is *prima facie* evidence of the facts certified to therein. R.S.O. 1960, c. 309, s. 27, *amended*.

(4) The registrar shall send to the Lieutenant Governor in<sup>Quarterly report</sup> Council quarterly as of the last days of March, June, September and December in each year a report containing, with respect to the immediately preceding three-month period, the names of the persons,

- (a) who have been granted partial exemption from examinations;
- (b) who have been granted no exemption from examinations;
- (c) who have been refused permission to write examinations; or
- (d) who have not been admitted to membership in the Association, because,
  - (i) their experience in engineering work was not satisfactory to the Council, or
  - (ii) they did not provide satisfactory evidence of good character,

giving, in each case, the reason for the decision, together with such further information and particulars with respect to such matters as the Lieutenant Governor in Council may require.

**23.**—(1) The registrar shall issue to each member admitted<sup>Certificate of membership</sup> to the Association a certificate of membership signed by the president or a vice-president and by the registrar, and bearing the seal of the Association. R.S.O. 1960, c. 309, s. 23 (1), *amended*.

(2) Every member shall keep his certificate of membership<sup>Certificate to be displayed</sup> prominently displayed in his place of business. R.S.O. 1960, c. 309, s. 22 (1).

## HEARINGS, UPON APPLICATIONS

Hearing where application for membership, etc., refused

**24.**—(1) Where an applicant for membership or a licence has met the academic and experience requirements, or an applicant for restoration of his name on the register has paid the required fees and has produced the required evidence of good character, and his application is refused, the council shall, upon the written request of the applicant received by the registrar within fifteen days of the receipt by the applicant of written notice of the refusal, conduct a hearing of the matter.

Conduct of hearing

(2) Section 25 applies *mutatis mutandis* to any hearing conducted under this section except that upon any such hearing the council may make findings of fact by such standards of proof as are commonly relied upon by reasonable and prudent men in the conduct of their own affairs. R.S.O. 1960, c. 309, s. 26, *amended*.

## HEARINGS, DISCIPLINARY

Powers of council to discipline members

**25.**—(1) Subject to subsection 2, where the council finds that a person who is a member or licensee is guilty of professional misconduct or has obtained registration as a member or has been issued a licence by reason of misrepresentation by such person, the council may by order do one or more of the following:

1. Reprimand such person and, if considered proper, direct that the fact of the reprimand be recorded on the register.
2. Suspend the membership or licence of such person for such time as the council considers proper and direct that the re-instatement of such membership or licence on the termination of such suspension be subject to such conditions, if any, as the council considers proper.
3. Direct that the imposition of any penalty be suspended or postponed for such period and upon such terms as the council considers proper and that at the end of such period and upon the compliance with such terms any penalty be remitted.
4. Direct that the membership or licence of such person be cancelled and that the name of such person be removed from the register.
5. Direct that the decision of the council be published in detail or in summary in the official journal of the Association or in such other manner or medium as the council considers appropriate in any particular case.

6. Direct that, where it appears that the proceedings were unwarranted, such costs as to the council seem just be paid by the Association to the member or licensee whose conduct was the subject of such proceedings.

(2) The council shall not take any action under subsection 1 <sup>Complaint and hearing</sup> unless,

- (a) a complaint under oath has been filed with the registrar and a copy thereof has been served on the person whose conduct is being investigated;
- (b) the person whose conduct is being investigated has been served with a notice of the time and place of the hearing; and
- (c) the council has heard evidence of or on behalf of the complainant and, if the person whose conduct is being investigated appears at the hearing and so requests, has heard his evidence or evidence on his behalf and has reached the decision that he is guilty.  
R.S.O. 1960, c. 309, s. 28 (1, 2), *amended*.

(3) Any person presiding at a hearing may administer <sup>Power to take sworn evidence</sup> oaths to witnesses and require them to give evidence under oath. R.S.O. 1960, c. 309, s. 28 (1, 2, 3), *amended*.

(4) If the person whose conduct is being investigated fails <sup>Failure to appear</sup> to appear in answer to the notice at the time and place appointed, the hearing may be conducted in his absence.

(5) Hearings shall be held *in camera*, but if the person whose <sup>Disciplinary hearings to be held in camera</sup> conduct is being investigated requests otherwise by a notice in writing delivered to the registrar before the day fixed for the hearing, the council shall conduct the hearing in public or otherwise as it thinks proper.

(6) The council may adjourn any hearing at any time and <sup>Adjournments</sup> from time to time.

(7) A person whose conduct is being investigated, if <sup>Attendance of person being investigated</sup> present in person at the hearing, has the right to be represented by counsel or agent, to adduce evidence and to make submissions, and any such person may be compelled to attend and give evidence in the manner provided in subsection 10, but such person shall be advised of his right to object to answer any question under section 9 of *The Evidence Act* and section 5 of the *Canada Evidence Act*.  
R.S.O. 1960, c. 125  
R.S.C. 1952, c. 307

Hearing of  
evidence  
R.S.O. 1960,  
c. 125

(8) The oral evidence submitted at a hearing shall be taken down in writing or by any other method authorized by *The Evidence Act*.

Rules of  
evidence

(9) The rules of evidence applicable in civil proceedings are applicable at hearings, but at a hearing members of the council may take notice of generally recognized technical or scientific facts or opinions within the specialized knowledge of members of the council if the person whose conduct is being investigated has been informed before or during the hearing of any such matters noticed and he has been given an opportunity to contest the material so noticed.

Summons  
to witness

(10) The president, a vice-president, the immediate past president or the registrar may, and the registrar upon application of a person whose conduct is being investigated shall, issue a summons in the form prescribed by regulation, commanding the attendance and examination of any person as a witness, and the production of any document the production of which could be compelled at the trial of an action, to appear before the council at the time and place mentioned in the summons and stating that failure to obey the summons will render the person liable to imprisonment on an application to the Supreme Court, but the person whose attendance is required is entitled to the like conduct money and payment for expenses and loss of time as upon attendance as a witness at a trial in the Supreme Court.

Failure of  
witness to  
appear, etc.

(11) If any person,

- (a) on being duly summoned to appear as a witness makes default in attending; or
- (b) being in attendance as a witness refuses to take an oath legally required to be taken, or to produce any document in his power or control legally required to be produced by him, or to answer any question which he is legally required to answer; or
- (c) does any other thing which would, if the council had been a court of law having power to commit for contempt, have been contempt of that court,

the person presiding at the hearing may certify the offence of that person under his hand to the Supreme Court and the court may thereupon inquire into the alleged offence and after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statements that may be offered in defence, punish or take steps for the punishment of that person in the like manner as if he had been guilty of contempt of court.



(12) At a hearing the complainant and the person whose <sup>Examination and cross-examination</sup> conduct is being investigated have the right to examine the witnesses called by them respectively, and to cross-examine the witnesses opposed in interest.

(13) The decision taken after a hearing shall be in writing <sup>Decisions</sup> and shall contain or be accompanied by the reasons for the decision in which are set out the findings of fact and the conclusions of law, if any, based thereon, and a copy of the decision and the reasons therefor, together with a notice to the person whose conduct is being investigated of his right of appeal, shall be served upon him within thirty days after the date of the decision.

(14) A record shall be compiled for every hearing consist- <sup>Record</sup> ing of the complaint and the notice referred to in subsection 2, any intermediate rulings or orders made in the course of the proceedings, a transcript of the oral evidence, if a transcript has been prepared, such documentary evidence and things as were received in evidence and the decision and the reasons therefor, provided that documents and things received in evidence may be released to the persons tendering them when all appeals have been finally disposed of or the right to appeal has terminated.

(15) Any document required to be served under this Act <sup>Service of documents</sup> upon a person whose conduct is being investigated shall be served personally upon him, but where it appears that service cannot be effected personally, the document may be served by mailing a copy thereof in a registered letter addressed to him at his last known residence or office address as shown by the records of the Association, and service shall be effected not less than ten days before the date of the hearing or the event or thing required to be done, as the case may be, and proof by affidavit of the service is sufficient.

(16) Where a member or licensee has been suspended from <sup>Reinstatement after suspension</sup> practising under this section, he may, upon payment of all fees and other costs owing by him to the Association, apply to the council to be re-instated as a member or licensee, as the case may be, and the council may terminate the suspension of such member or licensee upon such terms as it considers proper.

(17) A person whose membership or licence has been <sup>Re-admission after expulsion</sup> cancelled under this section may apply to the council for membership or for a licence, as the case may be, and the council shall, subject to subsection 18, hear the application and make such order as it considers proper and may include as a term of any such order such conditions as the council

considers proper to be fulfilled before the applicant is admitted to membership or granted a licence or to be observed by such member or licensee thereafter.

Idem

(18) Except with the consent of the council, no application under subsection 17 shall be heard before the expiry of two years from the date of the cancellation of membership or licence or the date of the final disposition of any appeal.

Idem

(19) Upon a hearing for admission to membership or for the granting of a licence under subsection 17, the council shall follow, in so far as practicable, the procedure provided for in the case of a complaint under this section, and a former member or licensee has the same right of appeal from an order made by the council under subsection 17 as is provided in section 26.

Committee  
of council

(20) The council may appoint a committee to act for and on its behalf composed of not fewer than five members of the council, one of whom shall be the president, a vice-president or the immediate past president, and may delegate to the committee all or any of its powers and duties under this section upon such terms and conditions, if any, as the council considers proper, and a decision or order of the committee is the decision or order of the council. *New.*

Practice  
pending  
appeal

(21) Except in the case of professional misconduct constituting incompetence on the part of the person whose conduct was investigated, the suspension or cancellation of the membership or licence of a person whose conduct was investigated under this section does not become effective until any appeal has been finally disposed of or the right of appeal has terminated. R.S.O. 1960, c. 309, s. 28 (5), *amended.*

#### APPEALS

Appeal

**26.—**(1) Any person whom the council has refused to register for membership or whose name the council has refused to restore on the register or to whom the council has refused to issue a licence or who has been reprimanded or whose membership or licence is suspended or cancelled may appeal from the order of refusal, reprimand, suspension or cancellation to the Court of Appeal within fifteen days from the day upon which he is served with the order of refusal, reprimand, suspension or cancellation.

Certified  
copies of  
papers

(2) Upon the request of any person desiring to appeal and upon payment of the cost thereof, the registrar shall furnish such person with a certified copy of all proceedings, evidence, reports, orders and papers received as evidence by the council

and any committee thereof appointed pursuant to subsection 20 of section 25 in dealing with and disposing of the matter complained of.

(3) If the appellant fails to pay the cost of the certified copy and the cost of such additional copies of the evidence as may be reasonably required for the purposes of the appeal within fifteen days after written demand from the registrar, the appeal shall be deemed to be abandoned. <sup>Failure to pay costs</sup>

(4) An appeal under this section shall be by motion, notice of which shall be served upon the registrar, and the record shall consist of a copy, certified by the registrar, of the proceedings before the council or committee thereof, the evidence taken, the report of the council or committee thereof and all decisions, findings and order of the council or committee thereof in the matter. <sup>Procedure and record</sup>

(5) Except as otherwise provided, appeals under this section shall be in accordance with the practice in appeals from the decision or order of a judge of the Supreme Court. <sup>Practice</sup>

(6) Upon the hearing of an appeal under this section the Court of Appeal may make such order as the court deems proper or may refer the matter or any part thereof back to the council with such directions as the court deems proper. <sup>Orders</sup>

(7) The Court of Appeal may make such order as to the costs of the appeal as the court deems proper. R.S.O. 1960, c. 309, s. 28 (4), *amended*. <sup>Costs</sup>

#### OFFENCES

**27.**—(1) Every person, other than a member or a licensee, who, <sup>Offences, persons</sup>

(a) takes and uses orally or otherwise the title “Professional Engineer” or “Registered Professional Engineer” or uses any addition to or abbreviation of either such titles, or any words, name or designation that will lead to the belief that he is a professional engineer, a member or a licensee or, except as permitted by section 2, uses the title or designation “engineer” in such a manner as will lead to the belief that he is a professional engineer, a member or a licensee;

(b) advertises, holds himself out, or conducts himself in any way or by any means as a member or a licensee; or



(c) engages in the practice of professional engineering, is guilty of an offence. R.S.O. 1960, c. 309, s. 30, *amended*.

**Idem**

(2) Every person who,

- (a) wilfully procures or attempts to procure registration under this Act for himself or for another person by making, producing or causing to be made or produced any fraudulent representation or declaration either verbal or written;
- (b) knowingly makes any false statement in any application or declaration signed or filed by him under this Act,

is guilty of an offence. R.S.O. 1960, c. 309, s. 33, *part, amended*.

**Offences,  
partner-  
ships,  
associations  
and  
corporations**

(3) Where a partnership, association of persons or corporation that has no subsisting certificate of authorization,

- (a) practises professional engineering;
- (b) uses orally or otherwise any name, title, description or designation that will lead to the belief that it is entitled to practise professional engineering; or
- (c) advertises, holds itself out or conducts itself in any way or in such manner as to lead to the belief that it is entitled to practise professional engineering,

every member of the partnership, every member of the association of persons, or the corporation and every director thereof, is guilty of an offence.

**Idem**

(4) Where a partnership, association of persons or corporation that has a subsisting certificate of authorization practises professional engineering in contravention of this Act, every member of the partnership, every member of the association of persons, or the corporation and every director thereof, is guilty of an offence.

**Penalties**

(5) Every person, member of a partnership, member of an association of persons, and every corporation and director thereof, who is guilty of an offence under this section is, on summary conviction, liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than six months, or to both. R.S.O. 1960, c. 309, ss. 31, 33, *part, amended*.

**Limitation  
of  
proceedings**

(6) No proceedings shall be commenced for a contravention of any of the provisions of this section after two years from the date of the commission of such contravention. R.S.O. 1960, c. 309, s. 35, *amended*.

## LIMITATION OF ACTIONS

**28.**—(1) Except as provided in subsection 2, an action <sup>Limitation of actions</sup> against a member or a licensee for negligence or malpractice in connection with professional services requested of him or rendered by him or under his direction or control shall be commenced within and not later than twelve months after the cause of action arose.

(2) The court in which an action mentioned in subsection 1 <sup>Extension</sup> has been or may be brought may extend the period of limitation specified therein either before or after it has expired if the court is satisfied that to do so is just.

(3) This section does not apply to proceedings under <sup>Does not apply to disciplinary proceedings</sup> section 25. *New.*

## TRANSITIONAL PROVISIONS

**29.**—(1) Notwithstanding section 4, the president, the <sup>Members of council</sup> vice-presidents and the elected councillors holding office when this Act comes into force shall continue to hold office until after the first annual election after this Act comes into force.

(2) Notwithstanding subsections 4 and 5 of section 4, at <sup>First annual election</sup> the first election of councillors after this Act comes into force, one councillor-at-large shall be elected for a two-year term and one councillor-at-large shall be elected for a one-year term and there shall be elected from each of the five regions mentioned in subsection 4 of section 4 one regional councillor for a two-year term and one regional councillor for a one-year term. *New.*

(3) Notwithstanding subsection 6 of section 4, all councillors <sup>Appointed members</sup> who have been appointed by the Lieutenant Governor in Council and are holding office when this Act comes into force shall continue to hold office for the term designated in the order in council by which they were appointed. *New.*

## MISCELLANEOUS

**30.** *The Professional Engineers Act* is repealed. <sup>R.S.O. 1960, c. 309, repealed</sup>

**31.** This Act comes into force on a day to be named by <sup>Commencement</sup> the Lieutenant Governor by his proclamation.

**32.** This Act may be cited as *The Professional Engineers Act, 1968-69.* <sup>Short title</sup>





The Professional Engineers Act, 1968-69

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*1st Reading*

December 19th, 1968

*2nd Reading*

May 26th, 1969

*3rd Reading*

June 27th, 1969

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MR. WISHART

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